

MEETING MINUTES
TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM
NEGOTIATED RULEMAKING COMMITTEE

Grand Hotel
Shawnee, OK
October 18-20, 2016

Tuesday, October 18, 2016

8:15 am – Commence Meeting and Welcome

- Welcome by Bob Sparrow the Designated Federal Official for the TTSGP Negotiated Rulemaking Committee (Committee). He thanked the five Tribes (Citizen Potawatomi, Sac and Fox, Absentee Shawnee, Iowa, and Kickapoo) who were instrumental in putting this meeting together. He then requested Madam Co-chair Kay Rhoads to start the meeting with prayer.
- Vice Chairman of Citizen Potawatomi Nation Linda Capps welcomed everyone and recognized the Absentee Shawnee for their share of planning this event and a special thank you to Governor Edwina Butler-Wolfe and Lesa Shaw for coordinating with everyone.
- Governor Edwina Butler-Wolfe thanked the others for the help in putting this meeting together and reminded everyone to please take advantage of all the events that were planned and is looking forward to meeting and networking with everyone.
- Principal Chief, Sac & Fox, and Committee Co-Chair Kay Rhoads welcomed everyone to the meeting on behalf of Sac & Fox Nation. She informed the attendees that Oklahoma is home to 39 Tribes and that she and the Tribes appreciated everyone being there.

8:30 am – DFO Bob Sparrow reviewed the Agenda that had been previously provided and requested a motion to accept. There were no recommendations for changes other than Mr. Sparrow noting that the USDOT Mode presentations would not be taking place as shown and that they would be pushed to the next meeting. Ms. Jody Clark asked for a listing of the 11 modes at USDOT and was told that they would be provided. The motion to accept the Agenda was passed.

8:40 am - Chairman John Barrett, Citizen Potawatomi Nation was recognized and addressed the Committee thanking them for coming and providing the Tribe with an opportunity to show off their businesses and efforts. He then spoke about the legislative history and governmental structure of the Citizen Potawatomi Nation.

8:50 am – FDO Bob Sparrow carried out a roll call of Committee member and introduction of others that were in attendance. The following primary Committee members were in attendance:

- Robert Sparrow, Designated Federal Official
- Joe Garcia, Ohkay Owingeh, Co-Chair
- Kay Wallace Rhoads, Sac and Fox Nation, Co-Chair
- Vivian Philbin, FHWA Office of Chief Counsel
- Denise Michels, Kawarek, Inc.
- Gerald Hope, Sitka
- Palmer Mosely, Chickasaw Nation
- Westley Woodruff, Poarch Band of Creek Indians
- Jody Clark, Seneca Nation
- Katherine Andrus, FAA
- Darryl Bradley, Navajo Nation
- Jennifer Jack, Salt River Pima-Maricopa Indian Community
- Karen Woodard, Morongo Band of Mission Indians
- Kenneth Martin, USDOT Deputy Assistant Secretary for Tribal Affairs
- Basharat Siddiqi, FHWA
- Royce Gchachu, Zuni Tribe
- Edwina Butler Wolfe, Absentee Shawnee Tribe of Oklahoma
- LeRoy Gishi, Bureau of Indian Affairs

The following primary committee members were excused from attending:

- John Smith, Wind River Reservation
- Tim Ballew, Lummi Nation
- Ron His Horse is Thunder, Standing Rock Sioux Tribe
- Mickey Peercy, Choctaw Nation of Oklahoma
- David Conner, Red Lake Band of Chippewa Indians
- Michael Hostler, Hoopa Valley Tribe
- Elan Flippin, FTA

The following committee alternates were in attendance:

- Dean Branchaud, Red Lake Band of Chippewa Indians
- Mary Beth Frank Clark, Nez Perce Tribe
- Eldridge Onco, FTA
- Octavio Machado, Ak-Chin Indian Community
- Jonah Begay, Navajo Nation

Please see the attached sign in sheets for others that were in attendance.

9:00 am – The meeting minutes for the previous meeting were reviewed and accepted for posting on the TTSGP website.

9:05 am - Opening Remarks

- Madam Co-Chair Kay Rhoads recognized that the Committee has a very busy schedule but hoped that everyone could participate in the activities. She also mentioned that the area and Tribes around the meeting location were in a major

- pipeline capital of the country. Like North Dakota, there are a lot of pipeline issues going on in Oklahoma and stated that along the Red River, which separates Oklahoma from Texas, there will be a pipeline that will be going through the area that will be affecting a lot of Tribes. This is a really important issue that we need to talk about.
- Co-Chair Joe Garcia, Ohkay Owingeh Tribe mentioned that he came had attended the NCAI session in Phoenix, AZ and that one of the sessions that he attended specifically discussed infrastructure in Indian Country. He agreed that it was a major issue and stressed the importance of tribal consultation.
 - Gerald Hope stressed that consultation must be a part of the process no matter if the project is being done by outside corporations/contractors (like a pipeline).
 - Katherine Andrus, stated that everyone is here to produce regulations but to also make sure that we do our best to address both the letter and spirit of the law and that's the part that is so important because you can have in your regulations and your laws your required to consult but what does that really mean? What's the spirit behind that?
 - Kenneth Martin made a few comments regarding consultation. He stated that the NCAI meeting last week held a listening session with tribal leaders regarding infrastructure decision making; upwards of 30 tribal leaders spoke and it was very helpful. Going forward, the Administration will be holding six additional consultations over the next few months throughout the country. He also stated that USDOT is in the process of updating its consultation policy. It was last updated in 1999. The issue was raised regarding projects being carried out in Alaska and California.
 - Madam Co-Chair Kay Rhoads said that she has been a part of numerous consultations with a lot of the different agencies over the past few years and that often it just appears to be a formality because it was required and whether or not they actually listen to what the Tribes have to say can't be seen. Congress has recognized that Tribes do better if they govern themselves. When there are consultations hearings, those departments really need to listen to what the Tribes are saying. Asking how it all work in the various departments raises the question about where the OST Office at DOT would be located.

9:30 am – Public Comment

- DFO Bob Sparrow asked if anyone had any public comments to offer.

- Gerald Hope stated that it seems like with the movement going on around the country in terms of infrastructure and politics bring up this effort on consultation. He emphasized the need to drill down and develop consistencies, especially as we transition to a new Administration. The Committee has the opportunity to lead what those consultations will look like and what would be agreed upon between the Tribes and USDOT.
- Michael Willis – Raised the awareness of an international rights movement that has been gaining momentum over time. On the question of consultation in the international arena where there has been a lot of infrastructure and damage to indigenous communities. Communities have reacted and mobilized, and the emerging standard is that dialog works and that each side of the table modifies its positions to develop consent positions as opposed to imposed decisions.
- DFO Sparrow mentioned that there will be opportunities for public comments at the start of each day's meetings.

10:15 am - TTSGP Committee Updates

DFO Sparrow provided the following:

- Tribal primary Committee member Mickey Peercy has resigned from the Committee. DOI – Self-Governance Advisory Work Group (DOISGAW) President Ron Allen will be forwarding a nomination for his replacement
- Tribal alternate Committee member Lindsay Earls has also resigned. Nominations for a replacement for Ms. Earls will be carried out in the near future by the USDOT.
- Mr. Sparrow also indicated that three primary members have missed the last two meetings. In addition, he stated that Mr. Michael Holster had contacted him to be excused to address the inclement weather in NW California.
- With regard to the identification of DOT Modes and Programs, Mr. Sparrow said that the list of DOT Modes will be provided but that it also can be found at www.dot.gov. He also stated that the list of USDOT Programs available to Tribes is still being vetted through USDOT – Office of General Counsel and that the list of Committee alternates is also being vetted.
- The travel requirements for the Committee were again reviewed and discussed. He stated that most folks should have been reimbursed but if they hadn't yet been reimbursed, that the DOT finance is reopening after the start of the new fiscal year. The process used in Sterling will again be used here with regard to submitting required receipts. Mr. Sparrow also requested that the primary members give notice to him or Wanda Ross as soon as they know whether or not they will be attending the following meeting so that we can give the alternates as much notice as possible. The Committee was also reminded to include mileage in their estimates so that the mileage reimbursement can be included.

- Mr. Sparrow reminded the committee that USDOT is currently operating under a 70 day continuing resolution (CR), thus limiting the available funding to only approximately 20%.

10:30 am – Presentations by DOT Modes

Federal Aviation Administration (FAA)

- Katherine Andrus
- Please see PowerPoint file labeled “FAA Unmanned Aircraft Systems (Drones)”

Summary: A presentation was given on FAA’s unmanned aircraft systems. This was the same presentation that was given at the NTTCC conference in Anaheim. There had been expression of interest from the Committee members in the past. Jody Clark stated that registering drones on tribal lands needs to be worked out with the Tribes, as each Tribe may have different launching and landing sites, and what will be allowed. This needs to be worked closely with the Tribes. Ms. Andrus stated that the government will have to work with the Tribes to see what and how it will come into play. She also stated that drones have proven beneficial for checking damages from landslides, etc., but if Tribes considered using drones for different operations, like erosion, what would be the differences between recreational uses to non-recreational uses if you are using it for the government? Right now, this is an open issue as to whether UAS operated by government entities would be subject to some of this. We do have an exemption waiver process on a case-by-case basis and will have to work with FAA. This is not a long term solution though. Longer term, we need to look at of what the role of the tribal governments would be especially with emergency situations (fire, earthquake, erosion, and flooding). Ms. Andrus also stated that the FAA is interested in hearing from Tribes to see what concerns are there regarding UAS’s, from people outside your area, and what are your interests in using them?

- Gerald Hope asked if the Operations workgroup was reviewing this subject and asked for it to be put on the list to consider talking about because it is a fast moving industry so it should be brought up.
- Jonah Begay, Navajo Nation – Stated that for 25 CFR 170, was there actual participation by Tribes other than comments received by the Tribes? We were told that the update did not trigger tribal consultations. The Tribes have a different perspective on it. We just want to make sure that consultation is done on drones. We are trying to make sure that Tribes are aware of what we are doing so that if you have a particular interest or desire for more direct consultation, we know to initiate that.
- Jody Clark asked if there were any regulations about shooting down a drone and whether or not they are considered an aircraft under regulations. That’s why we need to work with the Tribes and government.

DFO Sparrow opened discussion on future meetings dates and locations. After discussions, it was agreed that the next meetings would take place at the following times and locations:

- November 15-17 in Albuquerque, NM at the BIA National Training Center
- December 6-8 in Poarch Creek, AL.
- January 10-12 in Palm Springs, CA
- February 7-9 in Sterling, VA
- March 20-23 in Scottsdale, AZ

Motion was made to go into Work Groups.

Wednesday, October 19, 2016

8:15 am – Meeting re-commenced with a Morning Prayer

There were no Public Comments and the Committee went into Workgroups for the day.

Thursday, October 20, 2016

8:15 am – Meeting commenced with a Morning Prayer

There were no Public Comments and the Committee went into Workgroups for the remainder of the morning. It was agreed that the Committee would reconvene after lunch and that reports would be provided at that time.

1:00 pm – The full Committee reconvened.

Jody Clark, Chair of the Administration workgroup (Admin) provided the following report:

- The work group had a very productive week. Last month we were able to get an initial rollout of sections A, B, and C and section D was also started. This week they also started on annual funding agreements and made it through Sections:
 - E (general provisions),
 - F (provisions relating to Secretary),
 - G (cost principles),
 - J (facilitation),
 - K (disclaimers), and
 - A few sections of L where there were duplications or where an initial review had taken place (L1, L2 and L9).
- Section H was tabled and Section I was not reviewed as that was already being done by the Operations Group.(tabled) I (ops is working on, so we did not touch that one)
- The Work Group will pick up the reminder at the next meeting.

- These drafts will be made available to the Committee and the website so people can look at them for comments. However, it must be clear that these only on the website as a draft because the Federal team has not reviewed them yet, which should be between now and November.
- The Work Group also has a sheet regarding appeals, which was devised to identify where both pre and post appeals should be handled. We try to identify the pros and cons of the options that we felt were available. This will not go on the website but will be shared for review and comment within the Committee.
- Ms. Clark also stated that if a Committee member has a copy of the Admin workgroup's product and it is not dated, it came from the second meeting in Sterling. As of this month everything that the work group develops will have a watermark date on it to ensure that the most current version is being reviewed.
- Adam Bailey said that the work group talked about the funding process at USDOT and had have asked USDOT to come back at the next meeting with a presentation on how their funding system works in terms of how the funds actually flow through the department and come down to administrative agencies and get out to the Tribes under these processes. That will assist in the development of language for the regulations. The key interest is in timeframes as there is a provision in Title V saying it should be out in 10 days from the day it's received and there are issues on whether that will be feasible. We've asked them to come back and talk to us about why or why not it would or would not work.
- It was also stated that official workgroup minutes from both this and the previous meeting will be posted on the website.

Denise Michels, Chairman for the Operations Work Group (Operations) provided the following report:

- The minutes from this week's meeting have been emailed to everyone and can be posted as DRAFT.
- The work group was able to finish the Tribal Acts, ROW, Construction and Design Standards, and building codes. After discussion with the Admin Group, Payment Act, carryover funds and the limitation of costs were also completed.

- The workgroup also started working on the financial property of procurement management and that was tabled. There was a discussion between our Federal partners and our tribal attorneys on Title I, they just need a little more information to absorb on that issue so that is one of the Group's homework assignments.
- The other homework assignment is the Federal reporting requirements, the new ones that are in 2012. Michael Willis, Jim Glaze, and Krystyna Bednarczyk will be collecting those together. Jim and Michael will also bring information on 23 USC 202(A)(9) at the November meeting.
- Financial management area will be tabled.
- Program Income will also be looked at and discussed at the next meeting. Other areas have been placed in the parking lot
- Consideration for the creation of a DOT Advisory Committee as also discussed. The idea was whether it would be beneficial to look at the existing DOI and HHS self-governance advisory committees as models as well as the TTPCC as there are going to be a lot of moving parts with this new process to allow tribes to have input in implementation. These are successful models that are already working and could be built on.
- GSA Surplus equipment was also discussed.

A discussion also took place regarding a possible presentation for our Federal partners in DC regarding the new self-governance office.

CLOSING COMMENTS

Co-Chair Joe Garcia - asked if Corey Bobba would like to say anything. Corey, the designated facilitator for the Operations workgroup said that it had been a pleasure working with the workgroup and all that it has accomplished over the last few months.

Madam Co-Chair Elizabeth Kay Rhoads – Thanked Sac and Fox Nation everyone for participating the past week and that the 5 Oklahoma Tribes appreciated hosting the Committee in Oklahoma and again thanked those folks for their hard work and effort. Ms Rhoads stated that tremendous progress has been made and that she thinks that we will make our deadline. She stated that we have taken a lot of things into consideration and looked at a lot of different issues and tried to think about different scenarios that may happen along the way that might impact these regulations. We're hoping that as soon as some of this is finalized, those sections will be distributed out to the tribal members and I know some of you are sharing with your regional members now, which is great. We're asking that if you share that with them that they send their comments back to you as their representative, so that they can provide input back into the particular workgroups and then we can add those comments if necessary.

Co-Chair Joe Garcia stated that in their workgroup, one of the things that was not listed was that there are a large number of Tribes who have not or do not have that self-governance experience because they haven't gone self-governance. We are providing some knowledge building about self-governance and about how things that we talk about here it maybe a new environment for some. And we are keeping that in mind when we are discussing these issues.

DFO Sparrow added that it's the same on the Federal side. "We have folks at DOT who don't have experience in self-governance, so as we have these discussions and we look at each of the Q&A's and the various topics questions, light bulbs are going off within the Federal minds as well and we are learning because we are also hearing from the experts and those of you who have the experience." He stated that this has been a great opportunity for the Federal folks on the Committee and that it is opening up minds to things that we didn't know or even think about. He closed by saying that we all have the same goal.....to develop a great regulation for self-governance at USDOT.

DFO Sparrow also said that logistic issues had arisen for Albuquerque and that the next meeting may shift to Minneapolis. A decision will take place by the following Tuesday. Wanda Ross handed out the travel documentation for the next meeting and again reminded attendees to submit their receipts to Wanda ASAP. That was followed by a very big thank you to Wanda for her effort and coordination.

A Closing Prayer was said and a motion to adjourn was accepted.