

DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

P.O. Box 1734, McAlester, OK 74501

Telephone (918) 302-0252 ~ Facsimile (918) 423-7639 ~ Website: www.tribalselfgov.org

Sent Electronically to consultation@bia.gov

July 15, 2017

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

RE: Comments on the Department of the Interior's Implementation of Executive Order 13871 "Comprehensive Plan for Reorganizing the Executive Branch"

Dear Secretary Zinke:

On behalf of the Department of the Interior's (DOI) Self-Governance Advisory Committee (SGAC), I wish to thank you for the opportunity to provide ideas and comments on the DOI's plan to reorganize under Executive Order (EO) 13781, "Comprehensive Plan for Reorganizing the Executive Branch." Self-Governance Tribes are particularly interested in this initiative as previous reorganizations have both furthered and hindered the expansion and implementation of Self-Governance.

As the Department embarks on a process to develop DOI's response to EO 13781, Self-Governance Tribes encourage you to consider the following guiding principles and recommendations. These principles are essential to effectively address and protect Tribal governments, tribal citizens, and the unique government-to-government relationship Tribes have with the Federal government.

Indian Tribes are sovereign nations, and, as such, all relations between the United States and Indian Tribes should be of a formal government-to-government nature. DOI appropriately initiated Tribal Consultation to receive feedback and ideas from Tribal governments prior to submission of any plans to the Office of Management and Budget (OMB). However, Self-Governance Tribes believe an additional Consultation opportunity (or successive opportunities) are necessary to fully evaluate the plan and to provide specific comments on the Department's plan. Additionally, Self-Governance Tribes learned that the sessions initially hosted were not well organized and, in some instances, Tribal leadership received incorrect information resulting in decreased attendance to at least one of the listening sessions hosted. This is simply not acceptable as the Department assumes the heaviest burden of the Federal Trust Responsibility and should take measures to receive additional information from Tribes when a draft plan is available to review.

The Federal Trust Responsibility cannot be delegated to State or Local governments. The Trust Responsibility is one of the most important doctrines in Federal Indian law. It is the obligation of the *federal government* to protect Tribal Self-Governance, Tribal lands, assets, resource and treaty rights. Given our relationship with the Department we ask that you refrain from delegating decision-making authority with regard to Tribal Nations to any other governments. Our relationship pre-exists the founding of the United States and therefore we

hold the Federal Government accountable for decisions that directly affect Tribal governments and communities.

All Indian programs seek to fulfill the Federal Trust Responsibility. American Indians and Alaska Natives are members of sovereign Tribal nations that have a unique and legal and political relationship with the Federal Government. Programs and services provided through Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE) and Indian Affairs directly serve **Tribal people**. The health and welfare of this population, including the preservation of Tribal history, language, culture, traditions and sacred sites as required by existing statutes must be protected by the Federal Government. Protection of funding for Tribal programs is fundamental to fulfilling the federal government's trust and treaty obligations. Historically, the federal government has systemically shirked this responsibility and only recently redirected its efforts to fulfill the promises made in exchange for millions of acres of land in the United States. As such, Indian programs, collectively, cannot be redundant because the entire federal government has a duty to uphold the trust responsibility and adequately fund Indian programs.

Self-determination and Self-Governance authorities and rights as provided and defined under the Indian Self-Determination and Education Assistance Act (ISDEAA) must be protected. Since 1988 Tribes have had an option to directly manage Tribal programs so that they best meet the needs of Tribal citizens. In any plans to streamline or change the Department, DOI officials have a responsibility to protect and promote Tribal rights to enter into Title IV compacts and funding agreements. Any changes that affect the operation of the Office of Self-Governance will ultimately affect the 272 Tribes who currently exercise their option to directly manage Indian programs.

SGAC Recommendations:

Ensure any implementation timeline is appropriate for proposed changes. The 2012 "Bronner Report" reported that the results of Indian Affairs' 2004 reorganization efforts were negatively impacted for two reasons.¹ First, DOI did not host appropriate Tribal Consultation to evaluate the effects the reorganization would have at the agency, regional, and central office levels. We have already suggested the Department conduct additional consultation when a draft plan is available. The second reason the reorganization was largely unsuccessful was that it did not implement a timeline for effective centralization of administrative functions. Self-Governance Tribe encourage DOI to thoughtfully plan the development and implementation of any reorganization effort.

Reorganization must be from a principal standpoint and the focus should be on the Tribal citizens served and Tribal governments. The priorities of Indian country will vary from Tribe to Tribe and from region to region. Tribes are supportive of making processes more efficient, but there should not be any diminishment of services. We are deeply concerned by the dramatic changes being implemented at the Central Office level without Tribal consultation, including, the transitioning of many SES and career employees out into the field and the shifting of Regional Directors. Many of these individuals have been an asset to the communities they serve and to unilaterally make a decision without first consulting Tribes on how the organizational scheme is working is paternalistic and an affront to the government-to-government relationship. Consulting and working with Tribes at the beginning of the process is

¹ *Final Report: Examination, Evaluation, and Recommendations for Support Functions*. U.S. Department of the Interior – Indian Affairs. March 2010

essential before any changes are approved and implemented that do not work for Indian Country.

Many Tribes have expressed concerns about regulatory barriers and delays in decision-making that negatively impacts the ability of Tribes to effectively operate their governments and achieve their goal of self-sufficiency. While we support reviewing regulations that seek to improve current processes at both the regional and central office levels, we are opposed to changes that will create additional barriers, such as, centralizing programs and services that work well at the regional level or vice versa. There needs to be a clear perspective for empowering and strengthening Tribal communities and Tribes need to be included in every level of the decision-making process.

Improve communication and coordination efforts between DOI Bureaus and Indian Affairs, BIA and BIE, and BIA Regions. Self-Governance Tribes have consistently experienced the ineffective communication and coordination within the Department. Any reorganization effort should consider how the proposed changes, if any, would improve intradepartmental communication and coordination.

Appoint an Under Secretary of Indian Affairs. Under the Indian Trust Asset Reform Act, Public Law 114-178, the Department has the authority to appoint an Under Secretary of Indian Affairs. Self-Governance Tribes request that DOI appoint an Under Secretary of Indian Affairs to increase coordination and communication efforts between Indian Affairs and other Department agencies. However, funding to support this appointment, should not negatively impact funding that normally supports Tribal programs and services.

Elevate the Office of Self Governance to the Immediate Office of the Secretary. In 1991, at the request of Tribes, Congress provided funding for an Office of Self Governance to be established in the Department of the Interior's Office of the Secretary. Today, Self-Governance Tribes represent 49% of all Federally Recognized Tribes and OSG transfers more than \$400 million annually through 10 of the 12 Bureau of Indian Affairs (BIA) Regions. However, OSG remains under the Deputy Assistant Secretary for Policy and Economic Development two levels below the Assistant Secretary – Indian Affairs. Self-Governance Tribes recommend that it be elevated to the Immediate Office of the Secretary at the very least in the Office of the Under Secretary for Indian Affairs to acknowledge the government-to-government relationship and intent of Congress in 1991. SGAC believes that elevating OSG will increase understanding of Self-Governance within the Department and assist Tribes in fully implementing Title IV. We further recommend that that OSG be resourced to appropriately carry out their mission and responsibilities to nearly half of all the Tribes in the United States.

Efforts to amend the Title IV of the ISDEAA have been impeded by the lack of communication, coordination and an understanding about Self-Governance in DOI Bureaus other than BIA. As such, if the office is elevated we suggest that the OSG conduct an annual Self-Governance Outreach Symposium at the Main Interior to educate DOI employees. Additionally, we ask that this training be required for senior level and program staff to attend for at least 4 hours to talk with Self-Governance Tribal Leadership, Coordinators and OSG Staff about Self-Governance.

Thank you for the opportunity to our initial ideas and recommendations with the Department on this very important topic. We look forward to providing additional feedback in the future and how that we can work collectively to achieve the best results for Tribal Nations. If you have any

questions or would like to speak with me on any of these or other issues in the future, please contact me at rallen@jamestowntribe.org.

Sincerely,

A handwritten signature in blue ink that reads "W. Ron Allen". The signature is written in a cursive style with a clear first initial and last name.

W. Ron Allen
Tribal Chairman/CEO, Jamestown S'Klallam Tribe
Chairman, DOI SGAC

CC: SGAC Tribal Members
Sharee Freeman, Director, Office of Self Governance, Indian Affairs, DOI