



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, DC 20240

August 4, 2022

## Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs *Darryl LaCount*

Subject: Fiscal Year (FY) 2023 Requests for Attorney Fees and Litigation Support Services

The Office of Trust Services (OTS) is now accepting tribal requests for funding from the FY 2023 appropriations for the attorney fees and litigation support services program. **The cut-off date for Regional Offices submitting tribal requests along with complete package per instructions below are to be submitted to the Central Office no later than January 15, 2023.** The original proposal as well as an electronic file on a separate thumb drive are to be submitted for the ranking team review, along with a memorandum from the Regional Director to the Director, BIA, stating their endorsement of the proposals submitted for their Region. An email submittal of the proposal package will not be accepted.

### Attorney Fees:

Attorney Fee funds are for legal fees (not expenses) of private legal counsel to be retained by the tribes to represent litigation, negotiations, or administrative proceedings that involve the protection of tribal trust resources or tribal rights. In general, it is the policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. The regulations at 25 CFR 89.40, however, provide that there are exceptions to this general policy.

Requests should identify the applicable exception(s) and describe how the request meets each exception. To qualify for funding, one of the exceptions listed in 25 CFR 89.41 must be fully met. Approved funding for this program has been set at a rate not to exceed \$200.00 per hour. Each request will include the following:

- (1) Historical and other relevant information regarding events leading to the current situation.
- (2) A concise description of the issue, scope of work for which attorney fee funds are requested, including approximate court dates, time frames for negotiations, litigation, etc.
- (3) A detailed breakdown of the services, costs of the services, number of attorney hours and hourly rates. Requests should also include a tribal resolution, copies of the applicable legal counsel contracts, and a current comprehensive financial income statement. The financial statement should contain sufficient information for a determination to be made whether tribe can afford to pay for all or a portion of the legal services.
- (4) A Regional Solicitor Opinion of the Tribe's Request.
- (5) Tribes requesting attorney fees must provide a certificate or statement from their attorney's bar association indicating that the attorney is a member in good standing.
- (6) A memorandum from the Regional Director endorsing the Tribe's request for Attorney Fees/ Litigation Support funding.

Agency and regional office program staff are required to review the attorney fee requests and provide recommendations and pertinent information that will assist the Attorney Fee Review Committee in determining a reasonable amount of funding for the tribe.

If concerns are raised by the Regional Solicitor about information or lack of information in the request, please address those concerns before forwarding the application to the Central Office.

Litigation Support:

Litigation Support funds are available for tribes who are involved in litigation, negotiation or administrative proceedings to protect tribal trust resources or tribal rights (except for tribal water rights) and need funds to cover costs associated with developing evidence, for research services, or to procure the services of expert witnesses to support the tribe's position. Approved funding for this program has been set at a rate not to exceed \$200.00 per hour. (Funds for water rights issues are available from the BIA Water Rights Negotiation/Litigation Program.)

Requests will include the following:

- (1) Historical or general background information that describe the events leading to the current situation for which funds are requested.
- (2) A detailed breakdown of the services, costs of the services, number of hours and hourly rates.
- (3) A tribal resolution.
- (4) A memorandum from the Regional Director endorsing the Tribe's request for litigation support funding.

Agency and Regional office program staff will review the litigation support requests and provide relevant information and recommendations for use in the decision-making process. The Field Solicitor should be consulted if there is doubt whether litigation support funds should be used to support a specific matter.

Attached please see Attorney Fee/Litigation Support application requirements to aid regional coordinators in requesting proposals from the Tribes, as well as check list once proposals have been received by the regions for submittal to Central office.

The proposal package along with a copy of the Regional Director's memorandum of endorsement for Tribal Proposal should be sent to:

Chief, BIA Branch of Water Resources  
13922 Denver West Parkway, Suite 300  
Lakewood, CO 80401

The original memorandum addressed to the Director; Bureau of Indian Affairs, is to be sent to the following:

Director, Bureau of Indian Affairs  
Department of the Interior  
1849 C St., NW, MS 4606-MIB  
Washington, DC 20240

Questions, concerning the Attorney Fees or Litigation support services program, should be directed to David Fisher, Chief, Division of Water & Power, at (303) 929-7622 or, Christina Mokhtarzadeh, Chief, Branch of Water Resources, at (202) 374-5532.

Attachments

cc: Attorney-Advisor, Office of the Solicitor, Division of Indian Affairs, Branch of Environment and Lands  
Senior Counselor, Office of Assistant Secretary – Indian Affairs