



# Kiowa Tribe

P.O. Box 369 · Carnegie, Oklahoma · 73015

Phone: (580) 654-6343 · Fax: (580) 654-8412

## EXECUTIVE BRANCH

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*October 25, 2022*

### CHAIRMAN LAWRENCE SPOTTEDBIRD AND VICE CHAIRMAN JACOB TSOTIGH

#### Report of the First 100 Days of the New Administration

Carnegie, OK. On July 15, 2022, we were sworn into office as the new Chairman and Vice Chairman of the Kiowa Tribe initiating a new era of open, honest government. We have pledged to transform the Tribe into a place of efficient and effective service designed to improve the quality of life for its citizens.

It has been our great honor to serve the People these past 100 days with integrity and pride to restore faith and hope in the way things are done as a Tribe. Together, we have vowed to work our hardest to restore faith in our government so that our citizens can feel confident in the ability of leadership to handle the affairs of our Tribe in the best way possible. We believe that we are well on our way to accomplishing this goal in the weeks ahead with Dâuk:í's blessing.

This Report will provide a summary of the key issues and areas on which we focused our immediate attention within the Executive branch of government of the Kiowa Tribe.

**New Tribal Court System:** In 2017, the voters approved the new Constitution for the Kiowa Tribe that includes a judicial branch of government. The voters decided that the Tribe should have a tribal court system to exercise the Tribe's judicial authority to replace the BIA CFR Court. The new Constitution aligns with the federal policy of self-determination for tribes.

However, for more than five years, the prior Chairman, Interim Supreme Court Justices, and BIA officials held numerous meetings to *talk* about the Tribe's new court system but never opened the courts or heard a single case, despite having funds approved by the voters to operate each year. The BIA CFR Court continues to improperly assert its authority over the Tribe and its citizens by ignoring the mandates of the new Constitution.

We have met with the BIA Regional Director twice to discuss an immediate recognition of the Tribe's courts and judges. After initially refusing to "relinquish" the CFR Courts to the Tribe in violation of the federal law and regulations, they have since softened their position to work with us when we have all components of our Judicial Branch in place as outlined in our new Constitution. We have made it a top priority to fulfill the wishes of the voters and to open and operate a tribal court system for the Tribe as required by the Constitution as soon as possible. We believe we will be ready to open a court system in the weeks ahead thereby establishing our right to govern without outside interference.

**ACTION:** Chairman signed into law called the "Support for the Tribal Court by Repealing the Access To Justice Act".

**New Supreme Court Justices:** The Constitution of the Kiowa Tribe calls for five Justices on the Tribe's new Supreme Court. As of July 2022, the Tribe's Supreme Court included *three Interim*

*Justices.* We recently interviewed and nominated three highly qualified Justices for the Supreme Court, and the Legislature has unanimously confirmed all three Justices. We are in the process of nominating a new Chief Justice of the Supreme Court in the days ahead to complete the organization of our Court System.

**ACTION:** Nomination and Confirmation of three new Supreme Court Justices; Pending confirmation of Chief Justice of the Supreme Court.

**New Court Building:** In order for the new Court to operate on the Reservation, the Tribe has designated a building behind the headquarters in Carnegie as the new Tribal Court building. Renovations of the building are nearly completed, and we anticipate that the new court system will be operations in the near future.

**ACTION:** Continue to complete the building renovations for the new court system.

**Financial Review:** Upon taking office, we immediately directed an investigation of the overall financial condition of the Tribe. The Tribe hired an independent, professional financial consultant to provide an unbiased assessment of the general financial condition of the Tribe. The report from the consultant has included some positive findings regarding the financial accounting practices (which have been mostly conducted by outside vendors); however, the consultant has also identified some deficiencies, which have been addressed by making immediate internal administrative changes, as well as requiring ongoing assessments of additional improvements that may be needed. These steps will streamline the financial practices and procedures of the Tribe while protecting the Tribe's assets. Some specific issues we have addressed include:

- American Rescue Plan Act (ARPA) funds – In response to the COVID-19 epidemic, the Tribe received substantial grant funds through several federal programs including ARPA. The Tribe received those funds prior to July 2022, during the term of the prior Chairman, who unilaterally established an “ARPA” department and hired more than 26 tribal members to administer the funds, despite the lack of any authorization or an approved budget. We determined that about half of the federal grant funds have been expended.

**ACTION:** Conducted a review of the expenditure of ARPA funds and will continue to determine the best use of the remaining funds with proper approvals through a vote of the Kiowa Indian Council (“KIC”).

- Office of Inspector General (OIG) Investigation – Prior to July 2022, the US Office of the Inspector General (OIG) initiated an investigation into former Chairman Komalty's expenditure of federal COVID-19 relief funds, based on allegations of improper spending including on legal fees for the former Chairman to engage in litigation with the Legislature of the Tribe. We are in the process to resolve these issues with the OIG and we will keep you posted of any updates.

**ACTION:** Presented Tribe's final response to the OIG investigator.

- Finance Department and Personnel – The job of Chief Financial Officer (CFO) is the top position within the Finance Department and is responsible to oversee and manage the finances of the Tribe. We learned that the acting CFO hired by the previous administration delegated most of his substantive duties to an outside consultant. The acting CFO also participated and supported the creation of the improperly formed ARPA Department and was being paid from those funds without prior approval of the KIC. The position of CFO is now vacant and the Legislature has authorized the hiring of a well-qualified, professional to serve as the CFO for the Tribe.

**ACTION:** Actively recruiting a professional CFO to oversee and project the assets of the Tribe.

- Financial Audits – The Tribe’s financial audits have been completed through FY 2020, with the 2021 audit recently completed as of September 30, 2022. The completed audits required some corrective steps for the Tribe to take, which have been completed. The overall condition of the Tribe’s finances as reflected in the audits is positive.

**ACTION:** Past due financial audits have been completed, with the 2021 audit completed.

- Budget Modification – The last approved budget prepared by the prior administration failed to address many important functions and needs including:
  - Direct funding to tribal members who apply for assistance
  - Economic development funding Adequate funding for departments, and the judicial system
  - Incomplete listing of revenue sources and amounts
  - Lack of itemized listing of ARPA programs and services

The Departments have prepared proposed budget modifications for the remaining six months of the fiscal year, and we are actively working with the Legislature and Courts to prepare a final budget modification for consideration by the Legislature and voters of the Tribe. Full budget detail will be provided to any tribal citizen upon request.

**ACTION:** Completed an assessment of the current Annual Budget of the Tribe, identified deficiencies in the Annual Budget, and has prepared a proposed Budget Modification in consultation with the Legislature and Judicial branch of government.

**Legal Review:** Upon taking office in July 2022, we directed that an immediate assessment of the pending legal issues and lawsuits involving the Tribe to be conducted including:

- Kiowa Tribe and Comanche Tribe v. Fort Sill Apache Tribe and the BIA – In May 2022, the prior administration filed a lawsuit, with the Comanche Tribe as a co-plaintiff, against the Fort Sill Apache Tribe (“FSAT”) and the BIA to prevent a new “gasino” (small gas station casino) located on a former Kiowa allotment (at the Apache Y intersection) from opening. The Kiowa and Comanche Tribes filed the lawsuit a few days before the gasino was scheduled to open. The federal court denied the Tribes’ request for an injunction and the gasino opened in June 2022. The incoming administration inherited the lawsuit in July 2022.

Historically, the FSAT acquired the allotment in 2001, and after the BIA notified the Kiowa Tribe and received no objections from the Chairman at the time, the BIA acquired the allotment in trust for the FSAT. In 2005, a similar dispute arose between the Comanche Tribe and the FSAT over the Apache Casino site in Lawton, Oklahoma, which is built on a former Comanche allotment. In 2007, the Comanche Tribe settled the dispute with the FSAT by allowing the Apache Tribe to operate their casino on the former Comanche allotment in Lawton. This new lawsuit involves the same complicated issues of historical allotment ownership, transfers of allotments, and jurisdiction over the allotment by multiple governments. The lawsuit remains active in federal court and we are considering options to end this costly litigation including possible settlement.

- Lonewolf Construction v. Kiowa Tribe – The prior administration hired Lonewolf Construction company to construct a loading dock for the food distribution building. The company started construction of the project apparently without a contract, and soon after construction began an underground pipeline was apparently ruptured, and Lonewolf Construction stopped work. Another company eventually completed the project. Lonewolf Construction filed a lawsuit against the Tribe seeking monetary damages. The case remains open in the CFR Court.
- Assessment of the Tribe’s Laws Resolutions: We have discussed with the Legislature the status of the Tribe’s laws and the need to amend certain laws and create new laws. While many important laws including the Kiowa Code have been approved, we have identified the need for new laws including corporate laws to promote economic development.

**ACTION:** Continue to defend the Tribe’s interests in lawsuits filed by or against the Tribe. Continue discussions with the Legislature on the need for new laws to promote new economic development projects.

- ICWA – Join National Efforts to Defend the ICWA: The Tribe has joined dozens of other Indian tribes in a friend-of-the-court brief in a pending US Supreme Court case involving the Indian Child Welfare Act (ICWA). The ICWA and the status of tribes is currently under attack, and the Kiowa Tribe has joined the efforts to defend the ICWA.

**ACTION:** Joined the ICWA amicus brief with other tribes to defend the ICWA from attack.

### **Casino Issues:**

- KCOA Board of Directors (Trustees): The Kiowa Casino Operations Authority (KCOA) is organized under a Charter approved by the Tribe to operate and manage the Tribe’s casinos. The KCOA is directed by five board members called Trustees. As of July 2022, the KCOA only had three Trustees, the minimum number for the board to achieve a quorum to conduct business.

**ACTION:** Nominated 4 new KCOA Trustees who were all confirmed by the Legislature, and who now serve on the KCOA Board. The Chairman at the time – John Tahsuda – was removed from the KCOA Board by the new Tribal Chairman. The new KCOA Board selected a new Chairman who currently is working with the new board to address several problematic casino issues.

- Federal Lawsuit: Two days after taking office, the Tribe’s existing legal counsel, Ryland Rivas, withdrew from the case. As a result, we assigned a new law firm to evaluate the status of the ongoing lawsuit and to defend the Tribe’s interests. Later, we learned that the (former) Chairman of the KCOA Board authorized the KCOA’s legal counsel to enter an appearance *on behalf of the Tribe* in an ongoing federal lawsuit between the Kiowa Tribe and the Fort Sill Apache Tribe even though the KCOA is not a party in the lawsuit. We took immediate steps to clarify the assignment of legal matters and to obtain an evaluation of the status of the ongoing lawsuit after several key rulings made by the judge. We are also exploring the possibility of settlement in the case.

**ACTION:** We have clarified the Tribe’s legal representation in the ongoing federal case, and we are exploring the possibility of settlement.

- Contract with the General Manager: In April 2022, just three months prior to our installation into office, the (former) Chairman of the Kiowa Casino Operations Authority (KCOA), John Tahsuda signed a 5-year contract on behalf of the KCOA to hire Jon Peters as the General Manager for the Casinos. The contract included a \$298,000 annual salary for the General Manger, *with a \$2.5 million severance payment* if he is terminated without cause, or a year's salary if he is terminated for cause. The terms of this contract are grossly improper and excessive. The KCOA management practices including the hiring of key personnel are currently under review by the Legislature, the new KCOA Board, and the Chairman and Vice Chairman.

**ACTION:** The management practices of the Tribe's casino operations are currently under review by the Legislature, KCOA Board, and Chairman and Vice Chairman.

- Hobart Casino Project: Upon taking office, we learned that the KCOA Board (comprised of three people with 2 vacancies), had already authorized and pre-paid a local construction company called, Augusta Contracting, LLC, millions of dollars to construct a new casino in Hobart, Oklahoma. We have learned that the project was initiated without key components resolved. We are working with the new KCOA Board members to monitor the status of the project and to resolve outstanding issues regarding construction costs and financing.

**ACTION:** Conducted a review of the terms of the decision by the KCOA Board to hire a construction company to build the new casino, and working to address outstanding construction and financing issues.

**Government Operations:** Soon after our oaths of office in July, we held meetings with key departments, commissions, boards, and staff, as well as outside advisors, consultants, accountants, lawyers, and others. The purpose of the meetings was to learn more about the current operations of the Tribe and to hear from employees.

- Departmental Reviews: Since July, we have met with nearly all tribal programs and departments. We are meeting regularly with key departments including weekly updates from the Finance Department. We have also met with the Housing Authority to determine the obstacles that exist to providing more housing and housing services to the People. We recently hired the first Chief of Police for the Tribe. We have attended meetings with other tribes on issues of mutual concern including the jointly-held KCA lands. We have open communications with the Legislature and share information to assist in our operations, including for cost-effective administration.

**ACTION:** Hired a Chief of Police for the Tribe; Continue to evaluate the status of key departments and programs within the Tribe; Continue to hold weekly meetings with key personnel in the Finance Department; Continue to have open communications with the Legislature.

- Voting Rights: We have worked with the Legislature to pass a new law to protect the right of the members of the Tribe to receive a ballot in the mail to vote in tribal elections in response to a ruling the CFR Court that limited voting rights. As the new Chairman of the Tribe, I recently signed into law the "Right to Vote by Mail Act", to guarantee the right of all members of the Tribe to receive a ballot in the mail. which is (in response to the BIA's CFR Court decision); and the

**ACTION:** Signed the Right to Vote By Mail Act into law to guarantee all members the right to receive a ballot in tribal election in the mail.

**10-Year Strategic Plan:** On July 15, 2022, the day Jacob and I were sworn in, I presented a three-part comprehensive 10-Year Strategic plan for the Kiowa Tribe. This is the first time that I am aware, that an incoming Tribal Chairman brought a strategic plan to the Tribe. This three-part plan outlines three key components for growth and development:

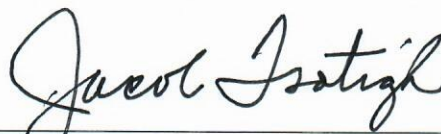
- **Tribal Self-Governance Status:** The Kiowa Tribe is behind the times regarding how we operate as a sovereign government. I will work with the Legislators to position the Kiowa Tribe to seek and receive designation as a Self-Governance Tribe in the near future. This will place us at the highest level of governance a Tribal government can reach in its government-to-government relations with the Federal government and the various funding agencies.
- **Kiowa, Inc:** We are currently preparing the application to secure a federally-chartered for-profit corporation – Kiowa, Inc. – that will serve as our holding company to lead the development of our profit generating enterprises. This is an efficient and stable business structure that many successful tribes around the country are using for their business development efforts. Once in place, it can form a number of subsidiary enterprises that focus on various lines of business to achieve two priorities: first, to generate additional funds to supplement the Tribal government budget and provide more needed services; and second, to provide much needed jobs for our Kiowa Tribal citizens.
- **Kiowa Tribal Empowerment Center:** This will be a unique one-stop services center to help our Kiowa Tribal citizens achieve their career goals and entrepreneurial goals as well. By preparing our citizens to fully achieve their career goals, we then empower them to stand on their own and support themselves and their families to lead healthy and successful lives. Another component will be to support tribal small business development by helping Kiowa Tribal citizens start or expand small businesses in the area.

A key component to this is the creation of the Kiowa Tribal Loan Fund (KTLF) that will be established to provide funding to our small business owners in their endeavors. The KTLF will be funded by the U. S. Treasury of which funds have already been allocated for this project.

We have come a long way in a short while so that change can happen that will improve the lives of our people through the services we are able to provide. We are working diligently and with deep commitment to transform our tribal government into a system operated with integrity and honesty. We have much work still ahead to get our tribal government on solid ground, but with the prayers of our Kiowa People, we can successfully achieve our goals.



Lawrence SpottedBird, Chairman



Jacob Tsotigh, Vice-Chairman