

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 25, 2012

James Fry
Legislative Research Council
500 E. Capitol
Pierre, SD 57501

Dear Mr. Fry:

Pursuant to SDCL 1-24-6.1, enclosed find a copy of the Joint Powers Agreement between the South Dakota Office of Attorney General and the Standing Rock Sioux Tribe. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Hallem", with a long horizontal flourish extending to the right.

Jeffrey P. Hallem
Assistant Attorney General

JPH/lde
Enc.



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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 25, 2012

Chairman Charles W. Murphy
Standing Rock Sioux Tribe
P.O. Box D
Building 1, North Standing Rock Ave.
Fort Yates, ND 58538

**RE: Joint Powers Agreement between South Dakota Attorney
General and Standing Rock Sioux Tribe**

Dear Chairman Murphy,

Enclosed find one copy of the fully executed Joint Powers Agreement Between South Dakota Office of Attorney General and Standing Rock Sioux Tribe. We have retained the other Joint Powers Agreement for our file.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marty J. Jackley".

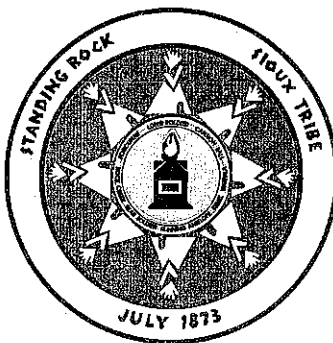
Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde
Enc.

Attorney General

OCT 22 2012
350485

Charles W. Murphy
Chairman



TRIBAL COUNCIL
(T LARG E)

Jesse "Jay" Taken Alive

Ronald C. Brownotter

Avis Little Eagle

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Vice Chairman

Adele M. White
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Frank A. White Bull
Kenel District

Errol D. Crow Ghost
Bear Soldier District

Milton Brown Otter
Rock Creek District

Frank Jamerson Jr.
Running Antelope District

Samuel B. Harrison
Porcupine District

October 17, 2012
Via Regular Mail

Honorable Marty J. Jackley
Office of the Attorney General
1302 E Hwy 14
Suite 1
Pierre, SD 57501-8501

RE: Joint Powers Agreement between South Dakota Attorney General and Standing Rock Sioux Tribe.

Dear Attorney General Stenehjem:

On September 17, 2012, the Standing Rock Sioux Tribal Council voted to approve of the "Joint Powers Agreement between South Dakota Attorney General and Standing Rock Sioux Tribe." This Agreement sets forth the conditions and responsibilities of the parties in order to assist the Tribe in satisfying its responsibilities under the Sex Offender Registration and Notification Act (SORNA).

Attached please find two original copies the Agreement signed by Tribal Chairman Charles W. Murphy. At your earliest convenience, please review and sign the enclosed documents. Once signed, please retain one original copy of the Agreement for the State's records and forward the other original copy of the Agreement to Chairman Murphy's office.

Thank you for your attention to this matter.

Sincerely,

Christopher G. Lindblad
In-house Attorney
Standing Rock Sioux Tribe
P.O. Box D
Bldg 1, North Standing Rock Ave
Fort Yates, ND 58538

**JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL
AND
STANDING ROCK SIOUX TRIBE**

Parties

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into by and among the State of South Dakota Office of Attorney General 1302 E. Hwy 14 Suite 1, Pierre, South Dakota 57501-8501 (hereinafter "SDAG") and the Standing Rock Sioux Tribe, P.O. Box D Fort Yates, ND 58538 (hereinafter "Tribe"). SDAG is the executive branch government agency of the State of South Dakota charged with maintaining the South Dakota Sex Offender Registry SDCL 22-24B (hereinafter SOR). SOR is a database containing information regarding persons convicted of certain criminal offenses. The Tribe is an Indian tribe recognized under the laws of the United States and located within the political boundaries of the State of North and South Dakota. The SDAG and Tribe are hereinafter collectively referred to as the "parties." Both parties are "jurisdictions" as that term is defined in the Sex Offender Registration and Notification Act (hereinafter SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006. The SDAG enters into this AGREEMENT pursuant to the provisions of SDCL Chapters 1-11, 1-24 and 22-24B.

1. Purpose

The Tribe has notified the appropriate office of the United States Department of Justice that the Tribe intends to become a registering entity under SORNA. The purpose of this AGREEMENT is to set forth the conditions and responsibilities of the parties in order to assist the Tribe in satisfying its responsibilities under SORNA.

2. Definitions

In this AGREEMENT:

- (a) Indian status shall be determined in accordance with prevailing federal law as it applies within the jurisdiction of the United States Court of Appeals for the 8th Circuit.
- (b) "Non-Indian" means any person who is not recognized as an "Indian" in sub-section (a) above.
- (c) "Reservation" means the Standing Rock Sioux Indian Reservation; and
- (d) "Tribal Court" means a court operating on the reservation under the authority of the Tribe.

3. New Entity Not Created:

The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this AGREEMENT, and that the cooperative undertaking herein described shall be administered by AGO, through its Division of Criminal Investigation Director and Tribe by its chief prosecutor or authorized designees as a party may from time to time designate as contemplated in SDCL 1-24-5.

4. Responsibilities, Rights, and Limitations—the SDAG

(a) The SDAG represents that it is charged with the duty to maintain the SOR in a manner that complies with the provisions of South Dakota law. SOR includes data pertaining to non-Indian sex offenders that are required to register who are residing, working, or attending school in Corson County. Under state law non-Indian offenders register with the Corson County Sheriff's Office and the information is transmitted to the SDAG.

(b) The SDAG agrees it will electronically submit to the Tribe all required sex offender registration data as set out in SDCL 22-24B-8 when a known Indian sex offender registers with the SDAG and has declared intent to reside, work, or attend school within the exterior boundaries of the reservation. The SDAG agrees to electronically submit to the Tribe the above required data. The data will be provided in a means prescribed and time period required by SORNA and South Dakota law.

(c) The South Dakota State Forensic Laboratory further agrees to provide the Tribe with DNA database collection kits and will perform DNA analysis and DNA database entry for Indian sex offenders on the Tribe's sex offender registry at no cost to the Tribe, as long as federal funding is available to cover the costs of SDAG purchases and DNA analysis costs.

(d) The SDAG shall timely notify the Tribe of changes in policy, procedure, or state law regarding the submission of offender data to the SDAG.

5. Responsibilities, Rights, and Limitations—the Tribe

(a) The Tribe agrees to create and maintain its own sex offender registry of Indians who are residing, working, or attending school within the exterior boundaries of the reservation. The Tribe agrees to electronically submit sex offender information to the SDAG for inclusion in the SOR. The information provided will include but is not limited to tribal law citation and text of the criminal sex offense and a brief description of the crime pursuant to South Dakota law. The Tribe will electronically submit to the SDAG all changes in the tribal sex offender laws.

(b) The Tribe shall maintain registry data pertaining to non-Indian registered offenders that are working for the Tribe or attending a school within the exterior boundaries of the Reservation. Non-Indian offenders that are working for the Tribe or attending a school

within the exterior boundaries of the Reservation will register with the Tribe as well as registering with applicable county authorities as required under SDCL 22-24B.

(c) The Tribe agrees to maintain an electronic database of criminal conviction information appropriate for inclusion in the SOR. The SDAG agrees for purposes of this AGREEMENT to submit to and accept information from the Tribe through that database.

(d) When an offender convicted in tribal court or registered with the Tribe, declares an intent to reside, work, or attend school outside the exterior boundaries of the reservation, the Tribe agrees to electronically submit to the SDAG all required offender data including, but not limited to, criminal history and/or juvenile adjudication information concerning sexual and non-sexual offenses. The data will be provided in a means prescribed and time period required by SORNA and South Dakota law.

(e) The Tribe agrees that it will require that all sex offenders convicted in tribal court to complete the SOR registration process, including address verification, using the Tribe's processes and procedures. Sex offenders who are residing, working, attending school, or visiting within the exterior boundaries of the reservation for more than three business days, will be required by the Tribe to complete the SOR registration process, including address verification, using the Tribe's processes and procedures.

(f) The Tribe shall timely inform offenders to be included in the SOR of their duties under SORNA and under the South Dakota law if offender leaves the Reservation. The Tribe will require sex offenders to read or have read to them and execute a notice explaining the offender's duty to register and certifying that the offender understands the registration requirement. The Tribe will provide the executed notice to the SDAG within three business days of receipt by the Tribe if the offender leaving the Reservation has declared intent to reside, work, or attend school elsewhere in South Dakota.

(g) The Tribe shall require all persons required to register, as well as those currently registered as sex offenders, to make an in-person report of changes in their registration information or address verification to the Tribal Court within three business days. The Tribe will provide changes to the SDAG within three business days of receipt by the Tribe if the offender is changing a residence, work, or school address to one outside the exterior boundaries of the Reservation.

6. Confidentiality

The Tribe agrees not to use or disclose any information it receives from the SDAG under this AGREEMENT that is confidential or exempt from mandatory public disclosure under SDCL 22-24B-10, including but not limited to registrant's social security number, victim name, DNA sample, as well as the name, address and phone number of local contacts and/or next of kin, unless authorized in writing by the SDAG. The SDAG agrees not to disclose any information it receives from the Tribe that the Tribe has previously identified as confidential, and that the SDAG determines in its sole discretion is protected from mandatory public disclosure under S.D.C.L. § 22-24B-10. The duty of

the SDAG and the Tribe to maintain confidentiality of information under this section continues beyond the term of this AGREEMENT, or any extensions or renewals of it.

7. Absconders—The SDAG and the Tribe

(a) When an offender is deemed an absconder by the SDAG or Tribe, the SDAG or Tribe shall within three business days electronically communicate pertinent information about the absconder to all required jurisdictions or agencies, including the United States Marshals Service and the National Sex Offender Public Registry. For the purposes of this AGREEMENT, an absconder is a person who has failed to register, change their address, or verify or update their registration as a sex offender.

(b) The SDAG or the Tribe shall make reasonable efforts to determine whether a sex offender suspected of absconding has actually absconded. If the SDAG or the Tribe determines that an offender has absconded, the party discovering that the offender has absconded shall electronically notify the other party within three business days of the determination.

(c) The SDAG or the Tribe shall investigate absconding sex offenders or delegate such investigations to the U.S. Marshall's service or another law enforcement agency having jurisdiction.

8. Compliance with Public Records Law

The Tribe understands that, except for disclosures described in Section 5, the SDAG must disclose to the public upon request any records it receives from the Tribe. The Tribe further understands that any records that are obtained or generated by the Tribe under this AGREEMENT, except for records that are confidential or exempt from mandatory disclosure under Section 5 may, under certain circumstances, be open to the public upon request. The Parties agrees to immediately contact the other immediately upon receiving a request for information under an open records law and to delay the response for a reasonable period of time to allow the party to respond or take measure to prevent production.

9. No Indemnification

The Tribe agrees to reimburse SDAG for all cost of DNA sample collection kits, DNA sample analysis and services if not paid for by federal funds. The SDAG and the Tribe each agrees to assume its own liability for any and all claims of any nature including all costs, expenses, and attorney's fees which may in any manner result from or arise out of this AGREEMENT. The parties shall not indemnify each other for any purpose (other than costs of DNA analysis if not paid for by federal funds) arising out of the operation of this AGREEMENT.

10. Dispute Resolution

It is the intent of the parties that disputes arising out of the operation of this AGREEMENT be resolved informally. The parties agree to make good faith efforts to reach informal resolution for at least sixty days before terminating this AGREEMENT.

11. Amendment

This AGREEMENT may not be amended except by written instrument executed by both parties.

12. Severability

If any portion of this AGREEMENT is held by a court having jurisdiction to be unlawful, unenforceable, or void, the remaining provisions shall remain in full force and effect.

13. Assignment

This AGREEMENT may not be assigned, delegated, or otherwise transferred by the parties, nor may any right, duty, or obligation under this AGREEMENT be assigned, delegated, or transferred, unless otherwise provided for in this AGREEMENT.

14. Entire AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the parties and it supersedes all prior discussions, communications, representations, agreements and understandings between them with regard to the subject of this AGREEMENT.

15. Third Parties and Term of AGREEMENT

The AGREEMENT is intended to only govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal. This AGREEMENT shall be effective from its effective date and shall continue unless terminated by either party as provided herein.

16. Termination of AGREEMENT

(a) Either party may unilaterally terminate this AGREEMENT for any reason and at any time. Such termination is effective ninety days after the non-terminating party receives written notice of intent to terminate, unless the parties mutually agree to a different termination date. In case of termination due to dispute, the parties agree not to initiate termination under this subsection until such time as the requirements for informal resolution in section 10 of this AGREEMENT have been met.

(b) Termination for lack of funding or authority: The SDAG may terminate this AGREEMENT effective upon written notice to the Tribe, or on a later date stated in the notice, under any of the following conditions:

1. Notwithstanding any other provision, this AGREEMENT depends upon continued availability of appropriated funds and expenditure authority for the purposes contemplated herein. This AGREEMENT will be terminated if the Legislature or the Federal government fails to appropriate funds or grant expenditure authority or if there is a lack of sufficient appropriated funds or lack of expenditure authority available to SDAG to perform its obligations under this AGREEMENT, whether due to lack of appropriations by the Legislature, Congress or otherwise. Once the determination of funding insufficiency is made, the affected agency will provide the other parties with written notice of such funding insufficiency and the effective date of the termination of the AGREEMENT based upon such insufficiency.
2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate to be provided under this AGREEMENT or are no longer eligible for the funding proposed for payments authorized by this AGREEMENT.
3. If any license, permit or certificate required by law or rule, or by the terms of this AGREEMENT, is for any reason denied, revoked, suspended or not renewed.

(c) In the case of Termination SDAG and the Tribe may elect to keep possession of all materials, documents and DNA samples that had been submitted by Tribe.

17. Notices

Written notices required under this AGREEMENT shall be sent to the persons listed in section 3 and the Tribal Chairman delivered via first class mail to the following:

For the SDAG:

Office of the Attorney General
1302 E. Hwy 14
Suite 1
Pierre, SD 57501

For the Tribe:

SRST COURT
Attention Chief Prosecutor
P.O. Box 363
Fort Yates, ND 58538

Chairman,
Standing Rock Sioux Tribe
P.O. Box D
Fort Yates, ND 58538

18. Effective Date

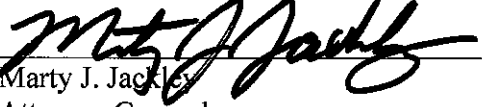
This AGREEMENT is effective once executed by both parties by signature of an officer, agent, or employee having apparent authority to enter the AGREEMENT on behalf of the party they represent.

19. Execution

For the South Dakota Attorney General:

Dated this 22 day of Oct, 2012

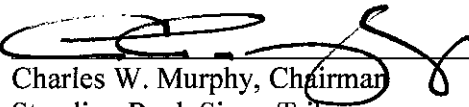
State of South Dakota


Marty J. Jackley
Attorney General
1302 E. Hwy 14
Suite 1
Pierre, SD 57501

For the Standing Rock Sioux Tribe:

Dated this 17 day of Oct, 2012

Standing Rock Sioux Tribe


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe
P.O. Box D
Ft. Yates, ND 58538