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NCAI CONFERENCE  
CSC BREAKOUT SESSION  
JUNE 25, 2013

Reported by: BECKY VAN AUKEN, CCR No. 418, RMR, CRR

1 RENO, NEVADA, TUESDAY, JUNE 25, 2013, 1:30 P.M.

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5 ASSISTANT SECRETARY WASHBURN: Let's go  
6 ahead and get started. Can everybody hear me okay?  
7 Okay. We've asked for a couple of portable mics to be  
8 brought. We have a court reporter here today. This  
9 is an official formal tribal consultation, and so we  
10 try to take a record of these consultations, and so  
11 it's very important to speak clearly and speak loudly  
12 for the court reporter.

13 What I'm going to do until we get some  
14 temporary microphones, which may or may not arrive,  
15 I'm going to ask people to come up to the front and  
16 speak using this microphone.

17 We are here to talk about Contract Support  
18 Costs and the Administration's approach to Contract  
19 Support Costs that was rolled out somewhat suddenly in  
20 this year's Greenbook, and that was the first the  
21 tribes had heard about it.

22 This is an opportunity to do consultation,  
23 honestly consultation that probably should have  
24 happened before the approach was rolled out in the  
25 Greenbook. But this is the chance that we have.

1           The subject of the consultation is the  
2 Administration's approach that I think many of you  
3 understand, but in essence what it requires is that  
4 the Bureau of Indian Affairs submit a list of  
5 contracts with the budget proposal, which is no small  
6 task because we have over 3200 contracts with tribes  
7 and tribal organizations, but list each of the  
8 contracts and submit an amount for each of those  
9 contracts that is the maximum amount that can be  
10 provided in Contract Support Costs. And that's what  
11 we're here to talk about today.

12           Let me say there is sign-up -- there's a  
13 sign-up sheet in the back of the room, and so there's  
14 sort of a traffic jam at the door. But I would ask --  
15 so don't feel obliged to rush back there right now to  
16 do it, but before you leave we would be grateful, if  
17 you wish, if you would be willing to sign up so we can  
18 record your attendance here today too.

19           The Administration has made some decision  
20 about how to approach Congress as to its budget, and  
21 that's what this approach represents. The  
22 Administration, I guess it was last week, sent over  
23 the report to Congress that lists out our contracts  
24 one by one with a cover letter, and to your tribal  
25 leader it went out as well, sharing some of that

1 information with the tribal leaders.

2 And so that has gone over to Congress.  
3 This is the approach. There has been some people  
4 asking -- basically asking the Administration to take  
5 it back, withdraw this approach. I can tell you that  
6 it was -- that's not an easy thing to do. This is  
7 something the Administration has to decided to do, and  
8 it won't be taking it back. It remains be seen  
9 whether Congress actually chooses this approach.

10 But the administration has prepared its  
11 Greenbook, and our Greenbook is actually -- the Indian  
12 Affairs Greenbook is only one of hundreds across  
13 government in how the Administration comes up with its  
14 budget requests, and it has to produce a balanced  
15 budget request under statutes that exist. And so if  
16 the Administration were to take back this approach and  
17 try to redo it, it would have to redo other Greenbooks  
18 as well, and that's no small task.

19 So the Administration is committed to this  
20 remaining -- the proposal to Congress for this year's  
21 budget. And so largely what this consultation is to  
22 do is to see if there's a way to make this work or to  
23 talk about how -- what you would like in future  
24 requests to Congress for the next budget that we're  
25 actually already working on, for the 2015 budget that

1 would be. And we're, again, working on that right  
2 now. And that usually gets -- that will be prepared  
3 for submission actually relatively soon.

4 So that's where we are. And the purpose of  
5 this consultation is to talk about Contract Support  
6 Costs going forward. And I don't want to do all the  
7 talking. This is not a joy to me. I'm sorry that we  
8 have to be talking about this. The Administration  
9 determined that it was necessary because of the fiscal  
10 crisis that we're in.

11 I would like to hear from you. I would be  
12 happy to answer questions as you need me to, but  
13 basically I would like to hear from tribes. And so  
14 that to me is what a tribal consultation is about.

15 So I think what I would like to do is to go  
16 ahead and open it up. Again, I will ask you,  
17 everyone, to speak loudly and to use the microphone  
18 when they speak so our court reporter can transcribe  
19 your remarks, and at some point please go to the back  
20 of the room, if you feel comfortable doing so, and  
21 sign in to this consultation.

22 I guess another thing that would be useful  
23 is to introduce my staff that I have here. Sequoyah  
24 Simermeyer, my deputy chief of staff, is here; Vanessa  
25 Ray Hodge from the Solicitor's Office is here; Mike

1 Black, the director of the BIA, is here; Larry  
2 Roberts, the deputy assistant secretary; Kallie  
3 Hanley, who's one of our special assistants; and  
4 Kathryn Isom-Clause is our newest counselor. Did I  
5 miss anybody? And Nedra Darling, our public affairs  
6 person, is here as well. Thank you.

7 Okay. Thank you all for coming. This is a  
8 stressful issue for many of us. I'm glad you're here  
9 to talk about it to help us find constructive  
10 solutions or to at least vent your concerns about this  
11 approach. And I think what I'll do is I think I'll  
12 just open up the microphone at this point.

13 UNIDENTIFIED SPEAKER: Can you have a  
14 tribal leader speak first?

15 ASSISTANT SECRETARY WASHBURN: Absolutely.  
16 I would always -- sort of first and foremost, this is  
17 a forum for tribal leaders to speak. I know some of  
18 them prefer to be represented, and so I always want to  
19 allow counsel to speak too. But if their tribal  
20 leaders -- the honorable thing to do, to honor them by  
21 asking them -- giving them the first opportunity to  
22 speak. But they don't have to speak first; they can  
23 wait and speak later if they prefer.

24 So I think that maybe the way to do it is  
25 until we get some other microphones, I would -- again,

1 I would ask you to come up, anyone that would like to  
2 speak, to come forward and do so and speak from this  
3 microphone up front. So the floor is yours.

4 UNIDENTIFIED SPEAKER: Thank you,  
5 Mr. Secretary. First of all, I really do appreciate  
6 you having this session and giving us -- those of us  
7 that were able to come to NCAI to weigh in on the  
8 proposals that are put forth by the administration.

9 When I commented to Jodi Gillette the  
10 concern I had as to your authority or what you were  
11 able to bring about as a result of this, I did not  
12 mean to come across as diminishing your position  
13 within the Department of the Interior or with the  
14 government.

15 As a matter of fact, since she made that  
16 comment, that does reinforce then the Secretary's  
17 responsibility to carry out the government  
18 relationships with the tribes and then assigning those  
19 responsibilities and the authorities to you. So her  
20 statement is very well received. It's a very strong  
21 statement and it's a timely statement.

22 What I am struggling with is the policy of  
23 the federal government, when we have a fiduciary  
24 responsibility, there is a trustee on the other side.  
25 And in the federal government the trustee -- normally

1 it would be the secretary, and then that is passed on,  
2 those authorities and responsibilities, to you.

3 But when we have an issue, like with  
4 indirect costs, it would appear that our trustee would  
5 carry our concerns and our issues and advocate for  
6 them and win because of the government, the government  
7 relationship and the fiduciary responsibility. But  
8 that ends up becoming undermined by lifers within the  
9 bureaucracy politically (inaudible) who basically  
10 don't know how to treat Indians. They really have  
11 never worked with us on trying to come up with a  
12 budget process that is for the needs of the people.  
13 It's most always based on what was funded last year  
14 and what percentage of that are you going to get or  
15 not get.

16 And that really is contrary to not only the  
17 relationship we have with the government, it's  
18 contrary to the statements made by our President. At  
19 the four meetings that I attended, he made some very  
20 strong statements that this nation's budget will not  
21 be balanced on the backs of those less fortunate.

22 And I'm not sure who's less fortunate than  
23 some of our needy tribes, particularly in Alaska. But  
24 yet, when we talk about the contract support, the  
25 dollar amounts are determined by quasi-governmental

1 agencies based on law, and then to give us part of it  
2 is really unheard of in any other part of government.

3 And I just really feel that it should be  
4 the trustee's responsibility to ensure that that law  
5 is followed, but that's not what's happening. Instead  
6 we end up in courts, we end up pleading to Congress,  
7 we end up talking to anybody that will listen,  
8 including other civil rights groups that have  
9 supported us in this endeavor, just to get the money  
10 that is due to us as a matter of federal law and also  
11 based upon the practice set up by the federal  
12 government to determine how much we're supposed to  
13 get. So this is really my tribe's concern as well as  
14 the other tribes within our area.

15 Finally, I just want to draw some attention  
16 to the dollar amount. If you were to take what's been  
17 appropriated -- let's just take 2012 as a baseline --  
18 and then what is needed based on all the testimony as  
19 well as calculations put forth by other agencies, the  
20 dollar amount and the difference between those numbers  
21 is not very great. But yet we're going to have more  
22 hearings, we're going to go to Congress, we're going  
23 to probably go back to court again and spend  
24 everybody's time and money at a time when we as Indian  
25 people should be having a hearing on the needs of our

1 people.

2 That's backwards. We should be having this  
3 hearing about the high unemployment rate in rural  
4 Alaska. We should be talking about the disparity of  
5 funding for training of our young people. Those are  
6 the kind of things we should be having a hearing  
7 about.

8 But because somebody is so determined not  
9 to give us the amount that we're eligible for under  
10 your laws, we're having this hearing. And we'll have  
11 another one. I notice that on the program you'll  
12 probably have one some other place.

13 And my other, finally, is while I  
14 appreciate this session here and giving me an  
15 opportunity to talk to you -- and if I offended  
16 anybody with my comments, I apologize -- but I must  
17 state that when we went to the 2009 signing of the  
18 proclamation of the President declaring a tribal  
19 consultation policy, this is not the  
20 government-to-government consultation. I'm here  
21 representing my government, but there are  
22 approximately 200 tribes in Alaska that do not have  
23 this opportunity. So their rights as a tribal  
24 government to have this conversation with you are  
25 being compromised.

1           And, now, I understand budgets as well as  
2 anybody and I understand the policies under which  
3 you're trying to operate, but I'm saying that more and  
4 more of our consultation on key issues need to be out  
5 there and in an area for those who cannot afford to be  
6 here. It's becoming a situation where consultation is  
7 available for those who can afford it. And I don't  
8 believe that was ever the intent of the President when  
9 he signed that document. I believe he intended that  
10 those who are less fortunate or those who are most  
11 challenged by the federal policy would have the right  
12 to come and talk to the officers of the federal  
13 government.

14           And so, once again, in all due respect, I  
15 appreciate this opportunity. I make my comments in  
16 good faith, and I very much do appreciate what you do,  
17 and the both of you are really trying to work very  
18 hard in a very difficult environment.

19           And that's kind of why I made the statement  
20 I did to Jodi Gillette this morning, because I believe  
21 that the players up above are playing by rules that  
22 are not keeping in mind the relationship that is  
23 necessary between tribes and the federal government.  
24 They're trying to develop policy only on budgets. And  
25 if that's going to be the case, then it really should

1 be whereby if we're going to be budget conscious, then  
2 we should get the same funding as any other agency  
3 within the Department of the Interior bar none.

4 Thanks again for your time, and I  
5 appreciate this opportunity.

6 ASSISTANT SECRETARY WASHBURN: Thank you,  
7 Chairman. I appreciate it.

8 MR. BAINES: Good afternoon. My name is  
9 Michal Baines. I'm the tribal chairman for the Sitka  
10 Tribe of Alaska. Our tribe is one of those needy  
11 tribes in Alaska that Ed spoke about.

12 And to talk a little bit more about our  
13 needs, I'd like to invite our general manager, Dr. Ted  
14 Wright, up to speak for a few minutes.

15 DR. WRIGHT: I appreciate your time and  
16 appreciate the ability or the chance to have a few  
17 words with you. We've actually arranged hopefully to  
18 schedule some time tomorrow morning, but I won't get  
19 too specific at this point. We actually have a half  
20 million dollar debt that's a holdover from contract  
21 support we haven't been getting over the last number  
22 of years even after -- or for up to 2001.

23 Because of that, we can't get a loan to  
24 essentially help us get to the point where we can buy  
25 a building, because we have 45-year-old structure.

1 It's not complicated. We actually are borrowing 3  
2 million some-dollars from the USDA to take care of  
3 that issue, but because we're in the situation with a  
4 half-million-dollar debt, we can't probably do that  
5 application pending.

6 We also have a realty office in Alaska who  
7 is not approving an application of ours to actually  
8 fully title the building we're in because there's a  
9 few owners that -- after we had everyone sign a number  
10 of years ago and paid off for the building, the Alaska  
11 realty office is saying we didn't have some forms in  
12 that were their forms. And so we can't even mortgage  
13 the building we're in so that we can borrow against  
14 that.

15 We're on land that we have because we  
16 bought it. We're not a tribe that has a reservation.  
17 We're not a tribe that has a casino. We're not a  
18 tribe, as so many are, that has any other means of  
19 doing this.

20 So when it comes to capping contract  
21 support, that's devastating to our tribe. We're not  
22 going to be able to replace the building we're in and  
23 have a healthy environment for our employees to work  
24 unless there's some solution to this problem.

25 This year we've been working two years to

1 get to this point, and now there's a ceiling. So I  
2 don't think you all can come up with a solution other  
3 than the one that we're dealing with right now, which  
4 is don't cap contracts for every tribe. Consider  
5 there are tribes that have only this means to get into  
6 a safe environment to work. Thanks.

7 ASSISTANT SECRETARY WASHBURN: Thank you.

8 MR. BAINES: I'd like to thank you for your  
9 time today too. Ted talked about some land that  
10 we're -- there's supposed to be a hearing, and I  
11 forwarded an email that has some of that information  
12 to Sarah. So hopefully you can look into the hearing  
13 that we're supposed to have and get back to us with  
14 any information you might be able to find. Thank you.

15 ASSISTANT SECRETARY WASHBURN: Thank you,  
16 Chairman.

17 MS. TEPP: Good afternoon. My name is Rose  
18 Tepp. I'm the tribal chair for Kenaitze Indian Tribe.  
19 I'm the one that pulled your hairs out of your nose on  
20 the last consultation.

21 When I compare -- I don't know if it was  
22 with Boyd (phonetic) or the other guy. To me, when a  
23 government withholds money for our tribal people that  
24 have absolutely nothing, and in Alaska there's  
25 starving people, and when the government absolutely

1 refuses to see that, what is blatant and you can see  
2 in front of your eyes, and you tell me no, no, there's  
3 no comparison, of course there's no comparison. They  
4 get all their dollars, all the money they want. They  
5 sign the paper. We got a contract with you. We've  
6 had contracts for 200-plus years.

7 And the government, the United States of  
8 America that was built under the Indians like  
9 yourself, our forefathers, that died for us, that bled  
10 for us, that walked for us, that got kicked off their  
11 land, and the Supreme Court says, Pay this, and you  
12 come up with a piece of paper and tell us, Oh, we'll  
13 give you a few dollars. That's good enough. Move on.

14 You're there. You're there in that seat to  
15 fight for us. No matter what the President says to  
16 you, you're supposed to fight for your people.

17 I know it's tough. But being Indian is  
18 tough. If we can walk those miles in them shoes and  
19 get killed and not be recognized that we were being  
20 killed for years to get to where we are, and still the  
21 same kind of prejudice -- maybe I'll call it that --  
22 and pat our backs, I don't think so.

23 I speak from my heart. I'm not politically  
24 correct. I wasn't raised that way. And I'll tell you  
25 something. My grandmother told me to fight for

1 everything that you see fit. And I do that. And I  
2 hope that you don't take this personally. Because  
3 you're Indian, I hold you responsible to fight for us.

4 Thank you for listening to me.

5 ASSISTANT SECRETARY WASHBURN: Thank you.

6 COUNCILMAN STRONG: My name is Gene Strong  
7 from Haines, Alaska. I'm a Chilkoot Indian Tribe  
8 councilman. And just recently -- this might not be  
9 the right forum, but it can be part of it because of  
10 who you represent. And this is in reference to IHS,  
11 the Indian Health Service. And a few years ago I  
12 was -- had the opportunity to help with SEARHC,  
13 SouthEast Alaska Regional Health Corporation. I took  
14 over that hospital in Sitka. And now I just hear  
15 recently that there was a representative from Health  
16 Service or something or other, I don't remember, that  
17 wants to cut the Indian Health Services down to where  
18 it's just going to cover Indians at the hospitals and  
19 at the clinics because of the budgets.

20 And I don't think that is right or fair  
21 because we never had any consultation to that effect.  
22 When we have budgets and contracts, we have  
23 third-party people that's helping us out to defray the  
24 costs. It is a big facility, and that takes care of  
25 most of whole southeast. A lot of people in Alaska go

1 there, or vice versa, federal government employees and  
2 people that's in the Coast Guard and the services they  
3 go to, because that's public owned or public kept.  
4 Funds come from the same places.

5 So I would like to see that you could  
6 advocate for us to help and let us know what we need  
7 to do to help curtail this, because when they cut off  
8 our third-party services to those people, then we're  
9 going to be doomed for health services. We can't  
10 afford the facility by ourselves because, like I say,  
11 our budgets and our tribal councils are getting pretty  
12 small. And we're trying all we can do to garner up  
13 funds to -- fundraisers. And ANB and ANS helps us out  
14 in advocating for the tribes in Alaska. I know you're  
15 pretty familiar with ANB, Alaska Native Brotherhood  
16 and Sisterhood. And they're the ones that started the  
17 whole thing way back when as our forefathers, and they  
18 helped pave the way. And then from there we kind of  
19 broke out into different areas of our expertise.

20 But I just wanted to mention that to you  
21 because I can see it's very detrimental to health, and  
22 that's going to take funds away from other social  
23 services and everything else you can think of that  
24 would help persons living the lifestyle. Because if  
25 you don't have health, then you don't have much of

1 anything. It's just a matter of time.

2 God bless you, and I thank you for the  
3 things that you said this morning and really  
4 appreciate your efforts, and we'll keep praying for  
5 you. All right?

6 ASSISTANT SECRETARY WASHBURN: Thank you,  
7 Council Member Strong.

8 COUNCILMAN STRONG: Thank you.

9 ASSISTANT SECRETARY WASHBURN: Let me  
10 address one thing, too. I don't want to interrupt,  
11 but there was a discussion about how to do these  
12 consultations. And we made a decision with HHS. We  
13 talked it through. And they've got very different  
14 needs and different circumstances than we have. So  
15 this is just a consultation about the Interior. I  
16 will take your message and pass it along.

17 But we decided to do our consultation  
18 separately with the notion that the issue may be  
19 treated separately if it needs to be treated  
20 separately. There was sort of an administration  
21 unified view of how to do this, but we actually have  
22 different needs in different departments, and so we  
23 decided to split the consultations and try to get your  
24 views individually.

25 And so Dr. Yvette Roubideaux is -- I think

1 she's already had a consultation and, again, done it  
2 separately from us at another meeting. But we aren't  
3 necessarily -- you're welcome to say what you'd like  
4 about HHS issues or IHS issues, but we are primarily  
5 trying to figure out how to go forward with our  
6 Department of the Interior contract support cost  
7 issues. Thank you.

8 Who's next? Chairman, come on up.

9 CHAIRMAN HAYES: Thank you, Assistant  
10 Secretary. I appreciate this. Good to see you. I  
11 wish I was here yesterday because we have some other  
12 issues I'd like to discuss.

13 Specifically with the Contract Support  
14 Costs, you're looking at --

15 ASSISTANT SECRETARY WASHBURN: Chairman  
16 Gary Hayes.

17 CHAIRMAN HAYES: Oh, I'm sorry. Chairman  
18 Gary Hayes from Ute Mountain, Ute Tribe in Colorado.  
19 God's country.

20 The issue that I always had when it comes  
21 to settlement or judging or decisions that have been  
22 made, it's always been Peter to pay Paul, meaning when  
23 you look at the BIA budget, if you look at the  
24 history, anytime there's a large settlement or any  
25 type of settlement, it's taken out of the BIA funds.

1 They supplement that, then they take it away.

2 And if you go back five years, you look at  
3 the millions of dollars -- hundreds of millions of  
4 dollars that BIA has to pay for these settlements,  
5 it's taken away from our programs. And what I'm  
6 asking when you're looking at this: Who's going to  
7 pay for this? Whatever decision is made, it should  
8 not come out of the backs of our people and our  
9 programs. Because it seems to me every time that  
10 happens we get the short end. They say, Well, we'll  
11 pay for it, but eventually we pay for the price.

12 So I'm hoping that as you have this  
13 discussion there's a judgment fund that the President  
14 can use at his discretion. I'm hoping you can  
15 cooperate with the Department of Justice to look at  
16 that and say, well, maybe this is where it needs to  
17 come from, both, not just BIA but IHS, to look at this  
18 and make sure that it doesn't happen to our people.  
19 Especially in the environment that we're in. What  
20 tribal governments do, we learn to do -- we've always  
21 been able to work with less, but now we have to work  
22 with less and deal with less. So it's important that  
23 we -- that you be mindful of that as you move forward.

24 And as you mentioned this morning in your  
25 comments about the BALA (phonetic) issue -- and I

1 wasn't there yesterday for that discussion, but I'm  
2 hearing that many of the tribes who aren't in the CFR  
3 court, it's not applicable because it's a federal  
4 court. Okay.

5 So what is the game plan? Because right  
6 now currently many tribes have to supplement their  
7 courts. If you look at that currently, I can tell you  
8 right now we only get \$69,000 to operate our courts  
9 when we're supplemented with about \$400,000. We're  
10 fortunate to have resources to do that, but I'm  
11 saying, well, wait a minute, as a tribal government  
12 who operates a business, it doesn't make sense for us  
13 to continue down this path. If we're going to go  
14 ahead and continue taking that responsibility, the  
15 trust responsibility, and also that's included with  
16 the funding resources for us to provide, as you  
17 mentioned, as economic development for tribes, a key  
18 component is a safe and secure community. And that  
19 includes courts. That includes public safety.

20 Many of these decisions that are made,  
21 there's -- they appropriate it, but there's no funding  
22 available. And I always tell it -- not only with the  
23 federal officials but with county and state officials,  
24 what they're dealing with is sequestration, and I  
25 always tell them and remind them: Welcome to Indian

1 country, because this is what we've been dealing with  
2 for decades.

3 And it comes to -- there's a time that we  
4 have to look at and really, as many have articulated  
5 earlier about, what do we need to do. I know you've  
6 heard this over and over. There's only so much you  
7 can do. But I think that we have to be more engaged.  
8 And I appreciate those tribal leaders who are part of  
9 the Tribal/Interior Budget Council. We try to do the  
10 best we can, but you have to be here with us.

11 And I'm hoping that Secretary Jewell will  
12 follow the same model with her Secretary Tribal  
13 Advisory Committee that she has, that she sits there  
14 and she listens to us. And I think it's important to  
15 have that dialogue. Because she is there at the  
16 cabinet meetings. She's there to advocate for IHS,  
17 even though her major responsibility is HHS, but she's  
18 there advocating on behalf of us.

19 So I'd like to see that more with the new  
20 secretary and being there at these meetings with us to  
21 discuss. Because these are some of the issues that we  
22 discuss all the time. It just seems like we  
23 continue -- we're redundant in our message all the  
24 time. And I'm hoping that we'll be able to,  
25 especially now, more importantly, to come together, as

1 you were saying, as partners to really look at this  
2 issue and strategize together in a consultation  
3 process with this Contract Support Cost.

4 That's what the executive order was, to  
5 consult with tribes. And here the President does this  
6 to us without really fully consulting with tribes? It  
7 just doesn't send a clear message of what his  
8 intentions are with the executive order and really  
9 consulting with tribes.

10 So, again, I appreciate it. And I've got a  
11 letter I'm going to give to you regarding courts,  
12 because I think many of us in Indian country are going  
13 to face this, this reality with this Violence Against  
14 Women Act, that if you're under CFR, how are you going  
15 to implement that. Thank you.

16 ASSISTANT SECRETARY WASHBURN: Thank you,  
17 Chairman Hayes. We now have a portable mic, so you  
18 have to raise your hand. And, by the way, let me say  
19 if anyone has written statements that they are  
20 presenting, it would be great to get a copy for the  
21 court reporter of those written statements. We would  
22 be grateful if there is such a thing.

23 MR. JOSEPH, JR.: Hello. Good day. My  
24 name is Badger, Andy Joseph, Jr., from the  
25 Confederated Tribes of the Colville, an Indian

1 reservation in Washington State at 1.4 million acres  
2 on our south half and about 1.5 million on our north  
3 half of our reservation.

4 I really would like to echo some of the  
5 words that's been said about this consultation. And I  
6 only see I believe maybe two or three of the tribes in  
7 the northwest Portland area here in the room out of  
8 the tribes that attend the Affiliated Tribes of the  
9 Northwest Indians. If you only have so many tribes  
10 here and you're trying to call this consultation, then  
11 what about the tribes that are being left out of the  
12 conversation?

13 And to me that's a real lack of  
14 communication. And, if not, some of the tribes might  
15 not have been able to even afford to come here due to  
16 this budget crisis that you're talking about. And it  
17 isn't our crisis. This is a crisis of the U.S.  
18 government. The government still owes our tribes what  
19 they signed into contract to begin with.

20 It's just like, to me, another broken  
21 treaty that the government is trying to say, oh, well  
22 we can't take this back, it's already a done deal  
23 because we already did the green paper on the budget.

24 To me that's not a very good excuse for not  
25 following through with your trust responsibility to

1 our tribes to carry our message. When we have people  
2 at home, our elders, our young people, afraid to be in  
3 their own communities because of the lack of law  
4 enforcement and people who provide a safe place for  
5 not only our members, but when you have a big  
6 reservation, that's where every citizen that comes  
7 through our territory -- and to me I think that the  
8 government needs to remember we look after everyone on  
9 our reservation. And no matter who they are, if  
10 they're tribal or non-tribal, their safety is really  
11 important to us. Some of them are guests and some of  
12 them just kind of wander through.

13 And I'm totally against any funding coming  
14 out of any of the programs that save Peter to pay Paul  
15 kind of thing going through, because then you're  
16 taking away from a program that might be supplying  
17 public safety to our people or it might be fixing the  
18 roads that need to be fixed.

19 When you have three mountain passes you  
20 have to go through and they're not maintained because,  
21 oh, we couldn't afford to go get some more sand for  
22 the roads or didn't have enough diesel to plow the  
23 roads out when the snow flies, these road conditions  
24 and stuff are also for our school busses and our  
25 children that have to travel, I just think that the

1 government needs to hold up to their trust  
2 responsibility.

3 And I never, ever thought I would see  
4 something like this come from this administration.  
5 It's our people that put this government in there, and  
6 I hope that everyone will remember, when the time  
7 comes to vote, what's happening and the treatment that  
8 we're getting.

9 I know it's got to be a tough job, and  
10 there is this crisis, but it isn't ours. We didn't  
11 cause it. Thank you.

12 ASSISTANT SECRETARY WASHBURN: Thank you,  
13 Mr. Joseph.

14 MR. MILLER: Good afternoon.

15 ASSISTANT SECRETARY WASHBURN: Good  
16 afternoon.

17 MR. MILLER: Mr. Secretary, for the record,  
18 my name is Lloyd Miller. I'm a partner with the law  
19 firm of Sonosky Chambers Sachse Miller & Munson. I'm  
20 here today on behalf of the Tribal Contract Support  
21 Cost Coalition which represents over 250 tribes across  
22 11 states, including intertribal coalitions, including  
23 tribes in Oklahoma, Montana, Idaho, Nevada,  
24 Washington, California, Alaska, Massachusetts.

25 I come here with additional experience. I

1 was the attorney of record who handled the Cherokee  
2 Nation cases in court, co-counsel with my friend  
3 Bryant Rogers in the Ramah case, and litigated the  
4 Arctic Slope case.

5 The lesson we take from these cases and the  
6 presentation we offer you today is that a contract is  
7 a contract. It is a binding commitment by the United  
8 States. And if we learned anything through two court  
9 decisions from the Supreme Court, it is that these  
10 contracts are no different legally from any other  
11 government contract and that the government contracts  
12 who run a police department or a realty program, the  
13 government needs to pay no less, no more than the  
14 contract price required to run the police department  
15 or the realty program.

16 Now, I heard in one of the consultation  
17 sessions that, no, these contracts are unique; we're  
18 dealing with a trust responsibility and balancing  
19 priorities. But that was the argument that was made  
20 to the Supreme Court and which the justices rejected  
21 8-0 in the Cherokee case. And it was never revisited  
22 in the Ramah case. There may be a trust  
23 responsibility, but when it comes to contracts, these  
24 are binding legal obligations. They simply have to be  
25 honored.

1           Actually, they can be breached. It's okay  
2 to breach them. We understand that. But then the  
3 tribes have a right to a remedy, to the claims that  
4 are ultimately paid to the judgment fund. And that is  
5 the way the system should work.

6           Now, the agency has said, Indian Health  
7 Service as well as your agency, that this is necessary  
8 because of balancing priorities. If we were to  
9 allocate additional funds to pay these contracts, that  
10 would have to come at a dismal fiscal environment from  
11 other programs. I believe that's a true statement.

12           But the problem is for the tribes. You  
13 just heard testimony from one of the tribal leaders.  
14 That's what you tell them they have to do. If they  
15 have a contract and the cost of the contract is  
16 \$500,000 to run it and it's not paid, they have to  
17 take the money out of other programs.

18           On whom should that burden fall, the United  
19 States or the tribes when the tribe is running the  
20 contracted program for the United States? The Supreme  
21 Court has said that purview falls on the government.

22           The proposal that's before Congress that  
23 you put there is that there be 1,663 contract amounts  
24 specified in the table. The table was submitted to  
25 congress. I have it here if anyone wants to see how

1 their tribe fares.

2 A lot of tribes have zero -- a significant  
3 number of tribes have zeros here. I guess the  
4 computations haven't been done yet. That is a  
5 problem.

6 I would offer you a few specific comments  
7 about this proposal. First of all, you are within, as  
8 we say, spitting distance of full funding of all  
9 contracts viewed as a whole. You're within 2 or 3  
10 percent. It's a very small amount of money.

11 This is not necessary. The proposal the  
12 Administration advanced to Congress for the Bureau of  
13 Indian Affairs is not necessary.

14 It's also not workable. The proposal lists  
15 contract amounts for 1600 contracts. How did we  
16 arrive at those amounts? I understand they're based  
17 on the last experience you know of, fiscal year 2012.  
18 Fair enough. You use the information you have. Thing  
19 is, 2014 will not be like 2012. Tribe A indirect cost  
20 rate will go from 30 percent to 32 percent. Tribe B  
21 indirect cost rate will go to 30 percent to 48  
22 percent. But you have provided no means through this  
23 proposal to take the money you surely won't pay  
24 Tribe B because you overpay them but their rate  
25 dropped and pay it over to Tribe A who needs more

1 money than you thought based on the chart you did that  
2 was two years dated.

3 There is no way in this scenario to deal  
4 with the inevitable variations, even small, but  
5 variations nonetheless, in indirect cost rates that  
6 change up and down over time.

7 For that reason it's not workable. The  
8 fact that you have zeros tells me it's not workable.  
9 The fact that there appear to be errors and,  
10 incidentally, no process to correct the errors. If  
11 this chart is adopted by Congress without any  
12 opportunity for tribes to weigh in about errors and  
13 what is the -- to ask what's the basis for the  
14 calculations, after the fact the correction of errors  
15 will be meaningless because you will be bound by the  
16 chart.

17 I suppose you could modify the proposal and  
18 ask Congress for authorization to vary these dollar  
19 amounts up or down by some given percentage and that  
20 might make a bad situation not as bad, but you have  
21 not done that yet.

22 There's also an issue about the accuracy of  
23 the numbers. Now, I've always thought that the  
24 shortfall report, especially your last shortfall  
25 reports that I saw that were published or were

1 submitted to Congress, as with many shortfall reports  
2 submitted to Congress by the Indian Health Service,  
3 were pretty good reports. But apparently you and your  
4 colleagues do not think they are good reports. You  
5 and your sister agency have told Congress and us that  
6 they're not accurate, they are not to be used as a  
7 basis for calculating what a tribe is actually owed,  
8 even though they are used as a basis for telling  
9 Congress how much of what was owed was not paid.

10 I don't understand the sentence I spoke  
11 just now. But this is what has been said to Congress;  
12 that the charts are not reliable indicators to  
13 determine how much the government owes, if anything,  
14 to any particular tribe.

15 As I say, you and the sister agency have  
16 said that. That's been said in answers to questions  
17 posed to Congress. And so then naturally the question  
18 that comes up: Okay. If the numbers you used to  
19 construct this chart are not reliable numbers, what  
20 are the reliable numbers?

21 You should not submit to Congress a chart  
22 which will have the force of law if it is not based on  
23 numbers on which you can rely. The numbers have to be  
24 clean. I mean, we didn't think the numbers are bad.  
25 It's the federal agencies that have said the numbers

1 are bad.

2 I understand that the Administration cannot  
3 withdraw a proposal for a number of reasons  
4 mechanically. But you can abandon it. You can stop  
5 fighting for it. I think Indian country would be  
6 pleased if the Administration would stop fighting for  
7 and look at other places to invest its resources.

8 You've asked about the future. As I think  
9 you probably know, the Office of Management and Budget  
10 has had underway for some two years a major reform  
11 effort directed at the negotiation of indirect cost  
12 rates. They're rewriting all of the circulars,  
13 they're combining the circulars, they're streamlining  
14 the rate process, and one of the reasons is they  
15 believe rates will drop if the system is simple.

16 If rates were to drop 2 or 3 percent, there  
17 would be no shortfall. And they've issued now a  
18 notice of proposed final rulemaking. They already  
19 went out last year with ideas and then they did a real  
20 proposal. And the Comment period is now closed. I  
21 don't think there's actually a problem for the Bureau  
22 of Indian Affairs if, as (inaudible) predict, indirect  
23 cost rates will drop slightly because the system will  
24 become more efficient, you will be fully funded. Your  
25 cap will take care of the government's liability.

1 It's not necessary.

2 For the future, I'd also recommend that you  
3 work with the Tribal Contract Support Cost Workgroup  
4 or the Tribal Government Contract Support Cost  
5 Workgroup to continue improving the shortfall reports.

6 Again, the agency believes that there are  
7 errors in the report. Rates or calculations, whatever  
8 those are, the tribes are there to work with you. The  
9 tribes have not been a better partner anywhere than in  
10 that workgroup, co-chair Rhonda Butcher from the  
11 Citizen Potawatomi Nation, and the request has  
12 repeatedly been made to reconvene, please, your  
13 Contract Support Cost Workgroup. I suggest this  
14 contract support cost workgroup indeed to have them  
15 convene together to eliminate some of the  
16 inconsistencies between the two approaches of the two  
17 departments.

18 This proposal was developed without tribal  
19 consultation. I hope that on a going-forward basis we  
20 can work more closely together. I continue to believe  
21 that given how close you are to fully funding these  
22 contracts and given what I'm -- here I'm just saying  
23 about how they may have actually been overpaying  
24 contracts. Who knows. We need to hear from them  
25 about why they say that -- that there is more

1 perceived problem than real problem and that this  
2 remedy will be unnecessary.

3 Thank you, Mr. Secretary.

4 ASSISTANT SECRETARY WASHBURN: Thank you,  
5 Lloyd.

6 MR. ROGERS: Good afternoon. I'm Bryant  
7 Rogers, an attorney out of New Mexico, originally out  
8 of Mississippi if you hear a Southern accent.

9 I've been working on indirect costs for  
10 tribes since 1971 where I had the privilege of working  
11 for one of the first tribes to get an indirect cost  
12 rate in 1972 as planner for the Mississippi Choctaws,  
13 and I'm one of their attorneys today. I'm also a  
14 member of the CSC workgroup, technical advisor  
15 appointed by Interior to represent tribe interests as  
16 a technical advisor in that workgroup.

17 And I'm here today to speak on behalf of a  
18 number of tribes we represent, our firm, VanAmberg  
19 Rogers Yepa Abeita and Gomez up in New Mexico. We  
20 represent about 30 tribes and tribal organizations.  
21 I'm here today on behalf of the Pueblo of Pamis  
22 [phonetic], the Mississippi Band of Choctaw Indians,  
23 the Chitimacha Tribe of Louisiana, Duckwater Shoshone  
24 Tribe, the Tulalip Tribe, Alamo Navajo School Board,  
25 and Poarch Creek.

1           We previously submitted written testimony  
2 on behalf of these groups following the White House  
3 (inaudible) session. I participated in that for  
4 Mississippi Choctaw.

5           And Lloyd mentioned I'm co-counsel for the  
6 Ramah case, which we've been working on since 1989. I  
7 remember very distinctly when we offered to settle it  
8 for \$29,000 for one year for one contractor, and the  
9 Interior said: Our way or the highway.

10           So it's been a very long road to get to a  
11 significant victory for Indian country that should  
12 have been celebrated by the tribes' trustee. It  
13 should have been celebrated because it resolved a  
14 legal issue that separated the tribes and the  
15 government on the indirect costs and the indirect cost  
16 obligations.

17           I'll echo Lloyd's point. It wasn't  
18 necessary for the Administration to make this  
19 proposal, not only because the gap between what is  
20 needed and what is being funded today for BIA is now  
21 so much smaller than it was in the past, but because  
22 it injected the Administration into what's  
23 fundamentally a policy judgment for Congress.

24           You would have done tribes an enormous  
25 amount of good had you gone forward with a proposal

1 that said, okay, we have the ruling and we can live  
2 with it. It's up to Congress to change things if  
3 Congress wants to. You could have submitted, and I  
4 submit should have submitted, the same kind of blanket  
5 cap, if you want a cap. We understand why there's a  
6 need for a cap. The court explained its purpose. But  
7 it allows tribes to have a remedy.

8 What y'all have proposed gives them no  
9 remedy when they have that unanticipated audit that  
10 they have to do, when they have an unanticipated  
11 vendor lawsuit that they have to pay for and there is  
12 no way to recoup that if the total indirect cost that  
13 they incur is greater than your cap.

14 We have a dispute still unresolved out  
15 there between whether or not the amount used is based  
16 on the incurred or based on the award amount times the  
17 approved rate. That's an issue in our regular  
18 negotiations. But the government has never questioned  
19 that if a tribe incurred legitimate indirect costs in  
20 operating these programs, that the government's  
21 budgeted numbers, appropriation numbers, couldn't  
22 cover them, that the tribes had a remedy for that, for  
23 those extraordinary circumstances.

24 Your proposal eliminates that remedy. And,  
25 I mean, I don't want to be maudlin, but it was

1 hurtful. Instead of celebrating this, the  
2 Administration immediately went forward with one of  
3 the best ways it could do to undermine the victory and  
4 start embroiling everybody in the dispute all over  
5 again. It could have been embraced and let the tribes  
6 fight it out in Congress. But it didn't happen, and  
7 it's very unfortunate.

8 And then I want to say something about  
9 consultation. Consultation is not telling the tribes  
10 what you're going to do after you've done it. It just  
11 isn't. If you come in and say it's a fait accompli,  
12 there's no point, and no matter what you say, we're  
13 not changing our mind, it just doesn't feel like  
14 consultation to me or to our clients.

15 ASSISTANT SECRETARY WASHBURN: Bryant, I  
16 don't want to interrupt you, but I do want to address  
17 this point just because I think I owned the fact when  
18 I started today that I don't think -- I personally  
19 don't think there was appropriate consultation before  
20 the budget agreement was rolled out.

21 But I have to view this as a good faith  
22 opportunity for consultation because we do this every  
23 year, and this is before next year's budget. And I  
24 will tell you I wouldn't be sitting here if I didn't  
25 get a good faith confirmation that these consultations

1 would be meaningful, if the information that I got at  
2 these consultations would be something that we could  
3 consider in next year -- I don't get to make these  
4 decisions myself, obviously. But I sort of said if  
5 I'm going to have to be the point of the spear out  
6 here, I want this to be a meaningful conversation.

7 And so I vow to you that the information  
8 that I'm taking here will at least be part of the  
9 conversation as to what we do for the 2015 budget  
10 process, which is basically what this is.

11 Consultation around this issue is kind of  
12 difficult because we actually have a very robust  
13 formal consultation process through the TIBC, or our  
14 Tribal Budget Interior Council, for coming up with our  
15 annual budget request. And this is part of that. I  
16 mean, the Contract Support Costs are part of that.

17 And so what we've done is we've -- we  
18 didn't talk about this there either, and so I'm not  
19 saying that solves our consultation problem on CSC  
20 issues, but we will do our consultation. We'll  
21 continue to do our consultation through TIBC. But  
22 this is sort of extra consultation on this issue  
23 because we are in the midst of trying to formulate the  
24 2015 budget. And I do vow to you that this  
25 information that you are presenting will be considered

1 as we go forward. I'm not sure you'll get what you  
2 want, but it will be considered. That's why I'm --

3 MR. ROGERS: This is another element,  
4 Mr. Secretary, of consultation. Normally the Bureau  
5 has a plan and tells you something about what the plan  
6 is.

7 Like in this case you've got a list of  
8 numbers; no information provided on how the numbers  
9 were created. If the tribes knew how they were  
10 created, they would have an opportunity to  
11 meaningfully consult with you on getting them  
12 corrected if they're wrong. There could be math  
13 errors, there could be methodological errors, a  
14 million reasons why the numbers could be wrong.

15 But just looking at a bare number,  
16 particularly when the -- to the extent that these  
17 numbers are coming out of the Draft 2012 Shortfall  
18 Report -- and we don't know that. We don't have that  
19 before us, so it is just like boxing with an invisible  
20 opponent. You can't -- I've tried to tell people:  
21 How do they get this number? I have no idea. I have  
22 guesses. I've been able to ferret out a little  
23 information from some Bureau folks on maybe how part  
24 of it was done.

25 So there needs to be some -- look, first of

1 all, I hope to God that this isn't becoming the new  
2 methodology of 2015, because when this was presented,  
3 it was to be a one-time interim solution, and all our  
4 fears were it was going to become the norm. So  
5 correcting the problems with the individual numbers  
6 and whatever does not salvage it, make it a good thing  
7 for 2015.

8 But there needs to be some description or  
9 methodology of standards. What is your objective?  
10 What is the point of the number? Is it supposed to  
11 be -- I mean, in your case it's much harder on  
12 the ITSF. In Interior's case, the answer to these two  
13 questions is much closer: Is it supposed to be the  
14 need, estimated full need that you will need to  
15 administer this program if nothing weird happens, or  
16 is it supposed to be this is what we're going to pay  
17 you no matter what your need was.

18 Granted, the gap is smaller for you, for  
19 Interior, but in order to judge errors -- I mean, what  
20 does error mean? Error from what standard? We've  
21 been given no information about how the numbers were  
22 generated, what their objectives are, how they were  
23 determined. So it's really hard to have a dialogue  
24 about correcting them when we don't know the standard  
25 you're using to put the number in. We know the

1 standard we would like to see, which is CSC need.

2 And for Interior -- I guess that's the  
3 second thing. If there's no way this thing can be  
4 withdrawn for 2014 -- I noticed there's a number. In  
5 the letter it says the list will be further updated.  
6 Well, for Interior, since you're so close to full  
7 need, why couldn't you update it with putting the full  
8 need number in? It might be a little higher number.  
9 You've already built in some increase from 218 million  
10 to 230 million, but if you put everybody's full need  
11 number in and gave everybody an opportunity to vet it,  
12 then it wouldn't be as disastrous. It wouldn't  
13 address the points Mr. Miller made about the problem  
14 of how do you shift from a cap number where a tribe  
15 comes in with a lower rate than anticipated and  
16 doesn't need that full number. Now you can move that  
17 money around into areas and meet the need of the  
18 tribe. I don't think you can do that under this  
19 approach.

20 What happens to the unspent CSC for  
21 individual cap when the amount that they end up  
22 needing is less? Where does it go? I don't know the  
23 answer to that. I don't know that anybody knows the  
24 answer. Maybe I could ask: Have y'all got any  
25 guidance on that question? That would be very useful

1 to know for the tribes going forward. And can you  
2 move that money to another tribe, or do you know?

3 ASSISTANT SECRETARY WASHBURN: I don't know  
4 the answer. I don't know if we're allowed to do that.  
5 But, I mean, I think that this is a matter for the CSC  
6 workgroup to work through.

7 Let me say that we are desperately trying  
8 to get our shortfall report out. We're close. We've  
9 been working on that really hard in conjunction with  
10 doing this.

11 Part of the reason this is so complicated  
12 is because it's so complicated. It's not an easy  
13 analysis, this calculation. So that's why it doesn't  
14 necessarily seem like the best solution going forward.  
15 But we do know that we are going to be working in  
16 times of fiscal crisis and restricted fiscal  
17 opportunities.

18 MR. ROGERS: If there is to be -- the  
19 reference to "will be updated later" in the letter to  
20 Congress suggests, at least, intimates that there  
21 might be an opportunity for tribes to engage their  
22 number with you. And do you have any plans, any  
23 ideas, procedures in mind for how that might be done  
24 and when?

25 ASSISTANT SECRETARY WASHBURN: Let me say

1 this. That was the intention, to do this. This is  
2 sort of a draft report, and then there would be a  
3 final report that we communicate to congress down the  
4 road once we've had a chance to work through numbers.  
5 And obviously that requires some consultation, not  
6 consultation in a forum like this, but getting the  
7 real people together.

8 And part of the reason for issuing that in  
9 its rough form was so that people could throw darts at  
10 it and say: This is a problem, this number is a  
11 problem, this number is a problem, we need to correct  
12 and get them -- you may not -- there may not be  
13 agreement about this approach, but at least -- of  
14 course we need to be doing the right numbers under  
15 this approach, and so that's partially the reason for  
16 getting that public, for getting those numbers out  
17 there, very specific numbers and -- so that  
18 conversation can begin.

19 And so the notion is that there's -- that  
20 there's not -- I'm not sure that -- I wouldn't say  
21 we've got it fully formulated, how that process will  
22 work, but there is an effort -- the idea is to get  
23 those numbers much more accurate both on our end and  
24 by working with the tribes and the consortium and  
25 other groups that have these contracts so we can get

1 more accurate numbers and so that once the final  
2 number is submitted, it is more accurate.

3 MR. ROGERS: Again, in order for that to  
4 work, there needs to be some statement about what you  
5 were trying to do with the number and how you came up  
6 with the number and give each tribe an opportunity to  
7 respond to their number. They don't have to respond  
8 to everyone else's number, but at least an opportunity  
9 to respond to their number.

10 On the workgroup, until -- frankly, until  
11 the Ramah decision came down, the workgroup used to be  
12 able to review the Draft Shortfall Report before it  
13 went to Congress. And it was very helpful. We found  
14 lots of errors and were able to ferret out things that  
15 would be embarrassing for the agency to go to  
16 Congress.

17 And as soon as we won the case, suddenly we  
18 can't see the Draft Shortfall Report before it goes to  
19 congress. Why? It doesn't make any sense. But that  
20 is the current position. If we have a workgroup  
21 meeting -- there was going to be a workgroup meeting  
22 next -- sometime in early July, first time in a very  
23 long time, and it was postponed because the report  
24 wouldn't be out to Congress. But the recommendation  
25 has always been let the workgroup look at it before it

1 goes to Congress. You don't want to be correcting  
2 things after it goes to Congress. Same thing on the  
3 IHS side.

4 You have asked for comments on sort of  
5 other options for the future. And this is something I  
6 would recommend you put in the hands of that  
7 workgroup. You've got enormous expertise, both in the  
8 tribal finance folks, Bureau finance folks, attorneys  
9 for both. It is a devilishly difficult thing to  
10 tackle. I remember grandfathering. I don't know if  
11 you do. That was the Bureau's last big fix for  
12 indirect costs. Before they were (inaudible) DCSC  
13 they said: We're not negotiating rates anymore.  
14 There are not going to be any more rates. Everybody  
15 is going to get a fixed amount, and it's going to be  
16 set based on what you got last year.

17 And they set out for a year sending memos  
18 to people on how to do that, including an error  
19 correction mechanism. But my client Alamo Navajo  
20 School Board had an error. The office of Inspector  
21 General concurred that that error had occurred, and  
22 Interior wouldn't change it. They wouldn't correct  
23 it. So we had to file a contract dispute. And it  
24 went on for years, which we finally won, the  
25 derivative of which was 450m-1.

1           Had y'all just acted reasonably, you  
2 wouldn't have had these remedies that tribes now have,  
3 but they're really important because the agency  
4 doesn't act reasonably.

5           I'm going to end with this comment. When  
6 we were trying to negotiate a settlement of that case,  
7 the Interior attorney told the Elders on the Alamo  
8 Navajo School Board: No podunk little Indian school  
9 from Magdalena, New Mexico, is going to tell the  
10 Secretary of the Interior how to calculate indirect  
11 cost. And that fueled us for three years until we won  
12 that and got the statute amended, we got the remedies  
13 put in, and we started the Ramah case.

14           So treat the tribes fairly. Thank you.

15           ASSISTANT SECRETARY WASHBURN: Thank you,  
16 Bryant.

17           CHAIRMAN ALLEN: Ron Allen, Jamestown  
18 S'klallam Tribe.

19           Kevin, I know that Lloyd and Bryant have  
20 done a great job in representing us in the Supreme  
21 Court decision and really articulating the obligation  
22 of the federal government to the Indian nations. And  
23 you know all the arguments. Basically our message to  
24 the federal government is stop treating Indians  
25 differently than any other contractor in America and

1           how we think -- we think that this policy has been in  
2           place and this frustrating process has been in place  
3           for so many years and is just outrageous and totally  
4           unacceptable.

5                         I have been involved in this for the last  
6           25-plus years, seems like, testifying countless times  
7           about this very same subject. And I have been exposed  
8           to all the different variations. Bryant raised a  
9           couple examples. And I remember Ross Summers  
10          [phonetic], when he was in, wanting us to go to  
11          15 percent direct flat line, indirect rates, and stuff  
12          like that.

13                        The bottom line is that in your memo to the  
14          tribal leadership, basically you're saying a number of  
15          things in the interim. And I agree with Lloyd's point  
16          that he says you're missing an opportunity for at  
17          least Interior to get this issue off their plate. I  
18          addressed a different subject matter because of the  
19          numbers. Even at that, I would argue that -- I  
20          differed with that philosophy because they're at  
21          \$4 1/2 billion versus your 2 1/2 billion  
22          proportionally.

23                        I don't think it's a good argument to be  
24          made. But saying that aside, the bottom line is is  
25          that how do we get from underpaying the tribes in our

1 recovery to handling your responsibilities. We're  
2 transferring these federal responsibilities from the  
3 federal government to the Indian nations even though  
4 it's underfunded at all categories, from indirect to  
5 the direct programs. And yet we get less than what  
6 you get. And you say you get cuts too, but  
7 nevertheless you still have sufficient resources to  
8 cover these responsibilities. And your resources are  
9 disbursed throughout the federal government system.  
10 It's not just in the BIA, it's not just in IHS; it's  
11 in the other agencies that cover many of the costs  
12 that we're recovering through these contracts and  
13 comments.

14 So my view as a tribal leader and one who's  
15 been actively involved in the workgroup over many  
16 years is -- you mention in your memo that we need to  
17 maybe simplify it. I don't think we need to simplify  
18 it. I think the policy is fairly clear. I think the  
19 process of negotiation is clear. I think the  
20 categories that we can recover, the cost for the  
21 expenses carrying out these functions, are clear.

22 We know what we're doing in terms of  
23 negotiating. The system is pretty straightforward.  
24 It's simply a matter of processing the negotiation of  
25 the direct cost and indirect cost rate, translate that

1 into the number, and then aggregating those numbers  
2 across the nation from Tribe A to Z.

3 So I don't to see us looking -- I don't  
4 want us to go back and try to reinvent the system in  
5 terms of recovery of these costs. The costs are  
6 already identified. So don't go down that road. It's  
7 just a waste of your time; it's a waste of our time.

8 And for the most part, most of us know what  
9 we're doing. There may be some tribes out there who  
10 are still trying to understand exactly what the issue  
11 of negotiating said.

12 So I didn't hear all of Lloyd's  
13 recommendations, but we do need to activate the  
14 workgroup, the CSC workgroup, quickly and take a look  
15 at it from the perspective of what is our proposal in  
16 terms of moving our agenda forward. And there's some  
17 issues out there, and many of us who are involved in  
18 those issues where it varies from tribe to tribe for  
19 different reasons, I don't want to get distracted by  
20 that issue. I want to just make sure that we're  
21 reconciling the numbers with regard to who should be  
22 recovering.

23 I don't think we need to spend a lot of  
24 energy talking about tribes who negotiated indirect  
25 cost rate, and some are a little late in terms of how

1 to recover those numbers. That's something -- we can  
2 sort that stuff out in terms of that process.

3 But Bryant raised the question of do we  
4 need the opportunity to reconcile the numbers. That  
5 has to happen out of the grassroots. You can't do it  
6 from a workgroup, you can't do it from necessarily  
7 Washington, D.C. They have to reach out to the  
8 tribes. Your regional folks who work with the tribes  
9 with regard to identification of their numbers need to  
10 be able to be activated and responsible in a timely  
11 manner to reconcile the numbers, and if they haven't  
12 reconciled the numbers simply because they haven't  
13 concluded negotiation, there is a process that we can  
14 use. The indirect cost rate doesn't change that much  
15 anymore. Unless a tribe has taken over a substantial  
16 amount of contracts, that rate and the number is not  
17 going to change dramatically. So you're going to find  
18 a fairly good consistency in recovering numbers, and  
19 there's a way for us to identify numbers in terms of  
20 giving yourself a little bit of a buffer when you  
21 budget the number that you have to account for.

22 Now, in your budget you talk about we're  
23 going to budget another 9 million, get a little  
24 closer. Well, it's more than 9 million to get us to  
25 100 percent. But even at that, we all know that

1 tribes -- new tribes are going to come in and start  
2 contracting. Maybe it's Navajo, maybe it's some other  
3 tribe got a contract and they can take over a pretty  
4 good size program, and that's going to equate to a new  
5 number. And it might be a big number. It might be a  
6 newly recognized tribe that comes on board and they  
7 get a new contract, and then so what does that number  
8 equate to.

9 But you have to always have resources. You  
10 have to have a line item in order to account for those  
11 unknowns that are out there. But there's also ways  
12 for us to project that. There's ways for the regions  
13 to identify who's coming around the corner and what  
14 contract, what program are you going to take over. If  
15 all of a sudden I'm going to take over realty or take  
16 over natural resources or take over courts or law  
17 enforcement, et cetera, you can know that ahead of  
18 time and put that in the equation, in the aggregate,  
19 so you know what the number is.

20 So the notion that we don't know the number  
21 if it's a floating number is a distraction. It's  
22 always floating. It's floating because the  
23 Self-Determination Act is working. It's working. And  
24 what's that mean? It means that the tribes believe  
25 that they can take over federal programs and do it

1 better themselves even if there's insufficient  
2 resources to do the job.

3 So this notion of doing more with less,  
4 we've been doing it for generations, quite frankly,  
5 and that's been a mantra for us. And I'm a big  
6 promoter of self-governance because give me more  
7 flexibility and make me use limited resources more  
8 effectively, but I still want my contract support in  
9 order to make sure that I'm handling those monies  
10 correctly, appropriately, consistent with the law, and  
11 I'm accountable. I want to be transparent. So we  
12 need to make sure that that happens.

13 And if there's any flaws, if somebody's  
14 severely under-recovered in that area and so they have  
15 to try to cut corners, maybe it's in accounting. We  
16 certainly wouldn't want that to happen, but they need  
17 to have somebody who's a planner or a grant writer  
18 because they've got to be competitive to try and  
19 secure or go after other resources to complement the  
20 resources they've been given, the BIA or the sister  
21 agency, IHS.

22 So there's those kinds of issues I think  
23 that are important for us to move this agenda forward.  
24 We need to move forward quickly. I'm a little  
25 alarmed, and I know that Lloyd and Bryant and Geoff

1 Strommer back here and other attorneys raised the  
2 issue, that this appropriation language actually  
3 amended the ISDEAA Act.

4 And, now, that alarms me. And I want to  
5 know if it really does or doesn't. If it does, I'm  
6 really alarmed by that. We do not want to undermine  
7 the tribes' rights that we have negotiated and we've  
8 refined for -- since inception back in 1975. And  
9 that's a big deal for us.

10 The tribes have won this case. And we're  
11 not going to let go. You just gotta get it. We're  
12 not going to let go. And if OMB is taking the notion  
13 that, well, we're going to treat these two sister  
14 agencies similarly, that's the wrong track to take.

15 And I personally told OMB that. I've gone  
16 to as high as I can possibly get above your examiner  
17 and told them that is the wrong approach. They  
18 wouldn't accept it; they wouldn't deny it. But,  
19 nevertheless, we've got to tell them that, and that's  
20 unacceptable if that's what they're trying to do. At  
21 least close the gap and move forward.

22 So you've got basically three issues in my  
23 mind. One is how we're moving forward and how we can  
24 close that gap, and the second one is the process  
25 we're going to use in order to make the system work

1 more effectively so that you can get the money.

2 There's a related issue, the third one. The issue to  
3 me is that it's always annoying to us how long it  
4 takes us to get our money for CSC. I'm still waiting  
5 for CSC. This is June going on July, so I'm in the  
6 third quarter. I have spent three quarters of the  
7 money that I had to borrow in order to carry out these  
8 functions.

9 That is simply wrong. And there's a way  
10 for the Bureau to do -- to manage the transfer of  
11 those resources out to the tribes in a way that at  
12 least provides them something while they're trying to  
13 sort out the specifics of what the employment numbers  
14 are.

15 If a tribe has a final number, I don't know  
16 why they just don't give them the money so they can  
17 have the actual federal dollars to pay for the federal  
18 functions and not use our tribal dollars that we would  
19 use for other functions that the federal government  
20 can't pay or won't pay for.

21 So we're diverting economic development and  
22 other kinds of ventures that are important to our  
23 tribe because we're covering literally millions of  
24 dollars to carry out that federal responsibility that  
25 you hold us accountable to.

1           So your policy, the division that oversees  
2           our audit, if they see us, you know, saying, well, how  
3           did you do all this, did you rob Peter to pay Paul,  
4           which is inappropriate in terms of accounting  
5           practices, you can't do that, but you forced us to do  
6           that.

7           If we're a tribe that has disposable  
8           income, we can do that. But the majority of the  
9           tribes don't have disposable income resources and so  
10          they have to rob Peter to pay Paul to cover that  
11          responsibility in order to carry out their duties with  
12          regard to these indirect costs functions.

13          So I'm very interested in moving this  
14          agenda forward.

15          I forgot my third point that I was going to  
16          raise with you.

17          But we've got to move forward  
18          constructively. We know you want to partner with us.  
19          We know that you have some constraints. We know  
20          there's stuff that goes on behind the scenes that you  
21          can't share with us. It's your system. It's what  
22          you -- your dialogue with OMB and so forth or maybe  
23          even dialogue with Congress that we go back and forth  
24          over can we pay, can we not pay it.

25          I have shared with you and I've shared with

1 OMB and I've shared with congress that we're in a  
2 Ping-Pong game. We're the ball, you're the paddle and  
3 congress has got the other paddle, and we're just  
4 going back and forth and back and forth trying to get  
5 our money.

6 And that's just not right. And it's been  
7 not right for generations. And so we've got to  
8 correct that. And I think you've got an opportunity  
9 here to champion that cause.

10 Our new secretary recognizes it is an issue  
11 out there. We've made a case that -- Ed Thomas over  
12 here has made the case about there's inequity between  
13 the agencies within the Department of the Interior or  
14 maybe an adjustment to those inequities, or part of  
15 that, to close the gap with regard to contract  
16 support. Get that off the table. We have too many  
17 other responsibilities. And you've already been in  
18 conversations with regard to the Law and Order Act and  
19 all these other things that are going on. In our area  
20 in the Northwest and Great Lakes we have natural  
21 resource issues that are important to us. We just  
22 don't need this issue.

23 This is a fundamental principle of  
24 government to government and -- but we can do it. We  
25 can do it. We will step up. This is a pretty good

1 size delegation in here. The workgroup is actually a  
2 smaller delegation. But we communicate well with  
3 Indian countries, so they know what we're recommending  
4 and does it work well with them.

5 I did remember the third point. The third  
6 point was the numbers you put in there are a little  
7 bit disturbing for me because the question is is that  
8 we got -- Bryant was getting at what was the  
9 methodology. Well, we do want to know what the  
10 methodology was. We probably have a pretty good idea,  
11 but we want to confirm what that methodology was, how  
12 we identified the numbers.

13 But if they're wrong, if you're off, if  
14 it's 25,000 or if it's \$250,000, that's a big deal to  
15 the tribes, and so we need to make sure that's  
16 correct. And is the number taking into consideration  
17 what new contracts tribes are being proposed? So  
18 where's that money within that system?

19 So the problem is, when you identify the  
20 tribes, where's the line item for the new contracts,  
21 new compacts, amendments, et cetera, and/or the  
22 adjustments, because more often than not, the  
23 adjustments will be under-identification than over.  
24 If it's over, I kind of like that idea, but I kind of  
25 doubt that's going to happen.

1 All right. For Chapter 1, that's all I got  
2 for now.

3 ASSISTANT SECRETARY WASHBURN: Thank you,  
4 Chairman Allen.

5 CHAIRMAN IYALL: Good afternoon. Bill  
6 Iyall, Chairman of the Cowlitz Tribe. And it's an  
7 excellent opportunity to interpret what Ron just told  
8 you guys.

9 I think what we're looking at here is the  
10 potential of a -- what should be a supplementary  
11 budget item becoming and evolved into getting rolled  
12 into essentially a shortfall in the carryforward.

13 That's something we want to avoid. It  
14 shouldn't happen. We actually shorted ourselves in  
15 the process of getting the work done. And so now  
16 going forward does it become a double whammy and we  
17 have to do that all over again but with a lower  
18 program allocation? So that's a big concern.

19 And with regard to other government  
20 contracts -- I'm a civil engineer. I write contracts.  
21 I retired from that business now, but I write  
22 contracts all the time. And when you put together a  
23 contract and the -- whether it's a bid or negotiated,  
24 there's all of these Contract Support Costs that are  
25 in that contract. And then they put the profit on top

1 of that. We don't get the profit, so -- but all of  
2 the government contracts allow for profits. They  
3 allow for all of the costs associated with doing  
4 business.

5 And so this is the cost of doing business  
6 with the tribes. And on behalf of our tribal  
7 citizens, we need to have those costs accounted for in  
8 the carryforward in the future.

9 And so you really need to avoid the double  
10 whammy and the double dip into our programs. And  
11 these are all vital programs that are incredibly  
12 important to our people with limited resources that,  
13 as Ron said, you're robbing Peter to pay Paul.

14 When we look at sequestration and then on  
15 top of it this other cut that comes forward when it  
16 should be -- as one of the attorneys said earlier, it  
17 should be a win-win and an opportunity to get back.  
18 And it really is -- if that doesn't happen, it  
19 undermines the self-governance concept to have that.  
20 It just really hamstringing that whole concept. That's  
21 my concern. Thank you.

22 ASSISTANT SECRETARY WASHBURN: Thank you,  
23 Chairman Iyall.

24 MS. SYLVESTER: I'm Ileen Sylvester. I  
25 represent Southcentral Foundation, and we operate in

1 the tribal authority of CIRI, also representing four  
2 tribes in the upper (inaudible) area.

3 And what I wanted to do is to read a letter  
4 into the record, but first I wanted to make a couple  
5 comments. I'll try not to repeat anything that's been  
6 said.

7 As a Native person -- I don't know if  
8 you've ever seen the series that was done called "500  
9 Tribes." It goes through the history of our people,  
10 First Nations people in this country, and what the  
11 federal government has done. And it's enough to break  
12 your heart.

13 And so as a Native person sitting here, and  
14 also working within our system and wanting to provide  
15 the very best for our people, to see what's being done  
16 now again -- and I know they're saying "contracts,"  
17 and I understand that I'm not a lawyer, but I do  
18 understand an agreement, a treaty agreement by the  
19 federal government, in payment for lands, for  
20 resources that have been taken, for the travesty to  
21 our people. And the federal government over and over  
22 and over again has broken every single one that's been  
23 signed.

24 And this, again, is something that's being  
25 broken. We have a responsibility to our people, to

1 our future generations. We're not talking about  
2 today. We're not talking about even 10, 20 years from  
3 now. We're talking about a hundred years from now and  
4 our responsibility today as Alaska Native American  
5 Indian people to set up something as a future for our  
6 future generations.

7 This is all we have. We have done amazing  
8 things with limited resources and having to fight  
9 again and again and again to get what we have today.  
10 And they have to use resources again to fight the same  
11 battle over again. It's just such a waste, a waste of  
12 resources and time that could be spent providing for  
13 our people the services that are needed.

14 So I'm just going to read this into the  
15 record. This is written by Katherine Gottlieb. She's  
16 our president and CEO. And this is actually to the  
17 President. She says let's go to the highest place.  
18 And so I'm going to just read this into the record.

19 "Dear Mr. President, I appreciate your  
20 commitment to strengthening the relationship between  
21 the U.S. Government and tribal governments including  
22 full and open tribal consultation.

23 In my 20 years in tribal healthcare, your  
24 administration has been the first to follow through on  
25 those commitments with such powerful action steps. I

1 value the time you have personally spent as well as  
2 the time dedicated by your advisors, directors, and  
3 other staff to meet with our tribal leaders and to  
4 take part in constructive discussion and dialogue.

5 I also wish to express how much I  
6 appreciate the humanness of your leadership. The  
7 nation has experienced your compassion and  
8 authenticity during times of great loss and mourning,  
9 including in the wake of the tragedy in Newtown,  
10 Connecticut, and the Sandy Hook Elementary School and  
11 in your public prayers requesting God's blessing over  
12 our nation.

13 While our tribal leadership appreciates the  
14 many positive steps forward in our  
15 government-to-government relations, we respectfully  
16 request, along with other tribal leaders across the  
17 nation, that the FY 2014 Budget Request Proposal that  
18 affects our ability to file claims be reviewed for  
19 adverse impact on self-determination contracts.

20 The Indian Self-Determination and Education  
21 Assistance Act of 1975 put tribes at the center of the  
22 choice whether to operate and administer programs that  
23 would otherwise be operated and administered by the  
24 Bureau of Indian Affairs and Indian Health Service.

25 Leading up to the passage of the act,

1 Congress made the strong statement that the prolonged  
2 federal domination of Indian service programs has  
3 served to retard rather than enhance the progress of  
4 Indian people and their communities, and it has denied  
5 to the Indian people an effective voice in planning  
6 and implementation of programs for the benefit of  
7 Indians which are responsive to the true needs of  
8 Indian communities.

9 Taking on the huge responsibility of  
10 management and ownership of our own healthcare  
11 delivery system was a difficult decision. In the face  
12 of broken trust and treaty agreements of the past as  
13 well as liabilities and personal responsibility and  
14 knowing the challenges and battles ahead of us to  
15 drive down health disparities, our tribal governance  
16 had to be cautious.

17 The decision was made to move forward into  
18 a contractual agreement with the government and today  
19 is owned and managed by the Alaska Native people of  
20 Southcentral Foundation, a nonprofit healthcare  
21 organization in Anchorage, Alaska. More than 60,000  
22 Alaska Native American people count on SCF for  
23 services that support our shared journey toward  
24 wellness.

25 The idea to develop and advance a table of

1 payments to be made to 500 IHS contracts has some  
2 defects. The appropriation is unknown, so any chart  
3 prepared now seems to be at best an estimate.  
4 Indirect costs are set by the government so funds can  
5 go unspent if these rates drop, posing additional  
6 problems. Also, it appears the tribes and the tribal  
7 organizations may not have a chance to review the  
8 tables to verify their accuracy. So is this plan  
9 really workable?

10 I have included a few suggestions in hopes  
11 of working together towards a solution.

12 IHS and BIA should convene a joint meeting  
13 of their two contract support cost workgroups, and  
14 these workgroups include government officials, tribal  
15 leaders, and tribal contracting experts. As the  
16 experts, they should be the first to reexamine the  
17 issues, suggesting any needed reforms, and lead the  
18 way to new solutions.

19 Two, IHS has repeatedly said that past  
20 calculations were too high and that tribal contractors  
21 are actually owed less than IHS said in its reports.  
22 If that is so, maybe there is no funding crisis after  
23 all. Whatever is going on, we need to understand why  
24 there have been errors and how to correct these errors  
25 moving forward. Again, IHS and BIA Contract Support

1 Costs workgroups should convene in a system of looking  
2 into this.

3 Three, better estimates and improve the  
4 projections of funding needs and the related increases  
5 in Contract Support Costs so IHS will not fall behind  
6 again in future years.

7 Four, continue a full consultation on this  
8 issue with all tribes and tribal organizations. The  
9 recent Supreme Court decisions are a victory for  
10 Indian country, a victory for tribal  
11 self-determination, and a victory for strengthening  
12 tribal self-governance.

13 I appreciate all your efforts,  
14 Mr. President, to embrace that victory and work with  
15 tribes and the tribal organizations cooperatively to  
16 develop solutions to any lingering problems.

17 I am confident that, under your leadership,  
18 we can continue in the task of improving our  
19 government-to-government relationship."

20 And then it says, "Sincerely, Katherine  
21 Gottlieb."

22 Again, we would encourage you, transparency  
23 is very important. Communication is very important.  
24 And we really don't want to see a closed door. Thank  
25 you.

1 ASSISTANT SECRETARY WASHBURN: Thank you.

2 MR. HER MANY HORSES: Hello, Kevin. How  
3 are you doing?

4 ASSISTANT SECRETARY WASHBURN: Good. How  
5 are you?

6 MR. HER MANY HORSES: Michael Her Many  
7 Horses, Oglala tribal member. I said it earlier at a  
8 meeting yesterday. Today's a national holiday for  
9 Sioux country. But it seems since June 25, 1876,  
10 we've been paying for that little victory we had. And  
11 again today the Supreme Court issued a ruling which  
12 limits voting rights of the people, poor people,  
13 people of color. In South Dakota we've had to battle  
14 that as well. So it seems like we're always having a  
15 conflict with the government.

16 This is the issue that Bryant and Lloyd  
17 said that we could reach a just and equitable system  
18 to determine these costs which we're entitled to. I'm  
19 a part of the negotiating team, the Tribal Observer,  
20 with Lloyd and Mike Gross and with Bryant, and there's  
21 representatives of Zuni and Ramah chapter. And, like  
22 I said, we have an opportunity to correct something  
23 that's been festering for a number of years.

24 And we've got new battles on the horizon.  
25 We've got IRS, we've got voting, we've got all these

1 things, sequestration. In the Lakota treaty language  
2 talk, the President of the United States is our  
3 grandfather, and he delegates an authority to you to  
4 represent and to deal with Indian nations. It's a  
5 very, very important responsibility. I don't mean to  
6 remind you of that. I know you're a law professor.

7 And some others have echoed this. We need  
8 to stand back and catch our breath a little bit  
9 because there are so many, many issues. And in  
10 addition to that, we have to still provide, with our  
11 limited resources, our tribal membership. We can't  
12 afford no longer to use our resources to support  
13 federal programs because the money doesn't come in  
14 timely. We'd have to borrow it at interest rates that  
15 are not the best.

16 So the lawyers have spoken. I'm a member  
17 of that team. We're going to continue to be there  
18 every session because we represent all the other folks  
19 in this room and want a fair and just settlement, but  
20 they also want a system that's going to work and  
21 actually represent what their needs are.

22 So I want to thank you for that opportunity  
23 to say that. Thank you.

24 ASSISTANT SECRETARY WASHBURN: Thank you,  
25 Mike.

1 Chairman Thomas?

2 CHAIRMAN THOMAS: Ed Thomas, Tlingit Haida.  
3 My comment is to let you know that, at least from my  
4 point of view, I understand the budget process. If  
5 you look at sequestration and the impact on the  
6 Department of the Interior this year, the last  
7 analysis I was able to do looked like close to  
8 5 percent. And so if you look at what the President's  
9 budget is going forward, 2014, and you take out the  
10 BIA programs, you'll see that the non-BIA programs is  
11 about 5.11 percent increase proposed for next year.  
12 And so then all those non-BIA programs, if they are  
13 impacted by sequestration laws again, should pretty  
14 much break even.

15 Now, traditionally when we were faced with  
16 that kind of disparity we could go to Congress and  
17 somewhat get renewed. We had proposals to take JOM  
18 out, we had HIPAA pulled out, we had indirect costs  
19 underfunded every year, we got (inaudible) by  
20 Congress. But it doesn't work with sequestering  
21 laws. And so what we see is what we get for this year  
22 in 2014.

23 And so I wanted to emphasize that going  
24 forward, the President's budget is so very important  
25 for Indian programs, period, and even more important

1 probably for contract support, that I, for one, would  
2 recommend that it not come out of Indian programs,  
3 period; that there be -- Ron brought up other  
4 agencies. Maybe CSA, some other part of government  
5 can experience a reduction and replenish the amounts  
6 that we never did get from those agencies.

7 But there's got to be a way to impress upon  
8 you and the Secretary that we can't resolve this  
9 problem from the budget that we get from the  
10 Department of Interior for BIA. That's not a  
11 resolvable issue within that small pot.

12 And so my request is that we look beyond  
13 BIA programs, beyond even Department of the Interior  
14 to resolve the full funding going forward, because you  
15 asked for some input on that. And the budget process  
16 is so vitally important from the President's point of  
17 view.

18 And let's make one final point on that, is  
19 let's say that the President's budget included the  
20 reduction again next year and -- suggesting maybe we  
21 can go to Congress and get it restored. Even if we  
22 were to win in the House, traditionally the party of  
23 majority in the Senate, if it's with the President,  
24 they will support the President's budget. That's just  
25 the way it works. And so even if we were to win in

1 the House side, we'd end up -- there will be a  
2 compromise and a conference. We'd end up maybe with a  
3 little increase, but never what is needed for us to  
4 continue on.

5 So that's kind of what my concern is here  
6 also is that -- and we need to impress upon the  
7 Administration that we understand his budget is much  
8 more important in this climate than ever before, and  
9 so we ask you if you will think about that.

10 ASSISTANT SECRETARY WASHBURN: Thank you,  
11 Chairman Thomas.

12 Chairman Smith?

13 CHAIRMAN SMITH: Chairman Smith from Duck  
14 Valley. First of all, I want to just tell the  
15 brothers and sisters here thank you, guys, for your  
16 concern coming here.

17 I see when every presenter gets up here and  
18 starts, they're telling him and telling him. I'm  
19 going to sit here and have a dialogue with him, asking  
20 him some questions and giving him a chance to answer.  
21 Everybody's been pressuring him right now, do this, do  
22 that, and we haven't had a chance to let him answer  
23 us. At the end of the meeting he'll try to follow his  
24 notes and try to cram them down us at one time. So  
25 thank you.

1           And one more thing before I go any further.  
2           I may get choked up on this. I wanted a chance to go  
3           into the general assembly this morning and talk to my  
4           very close friend Lloyd Miller and some of the  
5           attorneys that prosecuted -- they were on the case.  
6           And it brought tears to my eyes. I got choked up  
7           because I'm a walking, living symbol of what the  
8           states and the courts does to us. And it's very, very  
9           hurtful.

10           And I told Lloyd that I am so thankful and  
11           we ought to be rejoicing right now that the Supreme  
12           Court didn't do away with the equal law. That's still  
13           in place. God bless. And I wanted to thank Lloyd and  
14           all the attorneys, and I don't know who it was, that  
15           took that case to the Supreme Court.

16           We ought to be so rejoiceful and thankful  
17           for the hard work that everybody's done and had their  
18           input in this. At least we can still try to protect  
19           our babies. God bless you. Thank you.

20           Mr. Washburn, we're going to have a good  
21           dialogue here. You know, it was a while back the  
22           tribal leaders were invited to Washington, D.C., and I  
23           was one of them that testified in the House  
24           subcommittee. And it seems like we keep having these  
25           discussions over and over and over.

1                   And I remember back in the day when I  
2                   just -- we had a good contract support cost policy.  
3                   We went to the Bureau of Indian Affairs and, boy, did  
4                   we have about -- Lloyd Miller can remember that and I  
5                   think your tribal leaders -- we had one guy that  
6                   worked for the Indian Health Service, Ron  
7                   Demeray [phonetic] -- and I can't remember the guy's  
8                   name, Lloyd, but we asked if we could bring Ron  
9                   Demeray over to work on Contract Support Costs. He  
10                  allowed that, and they ended up with contract support  
11                  costs.

12                  From there I don't understand how we now  
13                  have to end up going to the Supreme Court and fighting  
14                  this in the Supreme Court. And I remember when Lloyd  
15                  got that -- or won that decision, the Supreme Court  
16                  ordered the Bureau of Indian Affairs or the Indian  
17                  Health Services pay it. Pay it. You're obligated to.

18                  My question to you, Mr. Washburn, is why do  
19                  we have to keep coming back to you and keep coming  
20                  back and keep talking to you? Is the system so  
21                  complicated that the tribal leaders can't get together  
22                  a request to you? Because we know that you can't go  
23                  lobby for us. That's our responsibility. But we  
24                  can't move any further unless you say we can. That's  
25                  my question to you.

1 ASSISTANT SECRETARY WASHBURN: No, I mean,  
2 I think that you can lobby and you should be lobbying.  
3 I know you fight every day for your community. And  
4 I'm sorry we have to fight old fights over and over  
5 and over, but we -- that's fighting for your  
6 community. And that's what I'm doing.

7 And so, yeah, sounds like -- I mean,  
8 there's a lot of history to these issues, and I know  
9 that there's been other solutions proposed in the  
10 past. And I don't know. I'm sorry that -- I'm sorry  
11 that it hasn't been resolved previously.

12 The sheer magnitude of it probably brings  
13 greater pressure on these issues. I'm thrilled to see  
14 so much self-governance and self-determination going  
15 on in Indian country. It's grown tremendously and  
16 it's a vast improvement, because tribes do this work  
17 better than federal employees do this work. And so  
18 when we can underwrite tribes, fund tribes properly to  
19 do this work, the work gets done better.

20 In fact, I think it's probably fair to say  
21 since we haven't been fully funding tribes to do this  
22 work, I think it still works better even though  
23 they're not fully funded. I think that that's the  
24 right result. As a policy matter -- as a policy  
25 matter the big picture is self-determination and

1 self-governance works.

2 And we're still working out the details of  
3 it. And it's gotten to be -- the details -- this has  
4 gotten to be quite a large magnitude because now we're  
5 talking \$230 million for contract -- just the Contract  
6 Support Costs portion, not the actual working money,  
7 but the administrative costs, which are in many ways  
8 just as important, but that's big money. And so it's  
9 really become -- because of the success of Indian  
10 self-determination and self-governance, it's become a  
11 much larger budget item. And when it gets to be a  
12 large budget item, people start -- it gets in people's  
13 sights and people start looking at it and it gets a  
14 lot more scrutiny, I guess.

15 CHAIRMAN SMITH: Thank you. That's not  
16 very good consolation for us, but I appreciate you  
17 giving us an answer. And the reason why, too, is that  
18 I don't travel as much as I used to on the national  
19 level. But when I sit here, I remember -- if you guys  
20 remember the time when I told you about we testified  
21 back there, and I don't know who it was, the other  
22 ones, that went and testified, but somewhere I heard  
23 that those other congressional people really came down  
24 on you and Dr. Roubideaux, so bad that you -- prompted  
25 you to have a quick meeting over in D.C. before the

1 tribal leaders. Do you remember that? We went  
2 somewhere way over there and we had a meeting.

3 Now, if you guys remember, I requested to  
4 have a contract support workgroup between your staff  
5 and the tribal leaders, and it sounds to me like that  
6 you guys have that. But I heard -- I think it was  
7 Lloyd or somebody got up and testified to the fact,  
8 how come we're not having that meeting? How come the  
9 Bureau and the Indian Health Service and the tribal  
10 leaders can't get together, and why can't we have that  
11 meeting to try to do something? Because Indian Health  
12 Service, they put -- the Solicitor's involved and the  
13 attorneys went at it and we couldn't do anything.

14 And I know you guys want to hear from the  
15 elected tribal leaders and stuff. I guess that's my  
16 question. Is that so, that we can't get together with  
17 Indian Health Service and the BIA and set down and  
18 work -- a Contract Support Costs workgroup? Tell us,  
19 can we do it?

20 ASSISTANT SECRETARY WASHBURN: Well, we do  
21 need to have the workgroup meeting. We do need to get  
22 the workgroup refocused on this issue and working.  
23 Whether it's a joint IHS-BIA initiative, I'm not sure  
24 that would be true.

25 I think that Dr. Roubideaux and I have

1        tried to take different paths because we've got  
2        different issues and different challenges and  
3        different needs, and so -- so I'm not sure that it  
4        would be a joint -- if we would convene it in a joint  
5        fashion like that.

6                    But we do need to get the workgroup  
7        assembled and working on these issues. And I will vow  
8        to you that I will make that happen. We need to --  
9        we've been working on trying to get the shortfall  
10       report and our initial list of contracts and our  
11       shortfall report done sort of to have a starting  
12       point. But we need to go ahead and start getting the  
13       workgroup meeting regularly to address this issue, and  
14       we will do so.

15                   CHAIRMAN SMITH: Thank you. I'm sitting  
16       here listening to some of the people's report, but,  
17       you know, again, no disrespect to you and Dr.  
18       Roubideaux, none whatsoever, when I first got started  
19       in tribal politics about 18, 19 years ago, and I  
20       remember some of our tribal leaders then, our  
21       chairmen, the way they got business done -- that's  
22       why I asked earlier -- they didn't go like to  
23       agencies' area directors and finally end up to you.  
24       They went right straight back to the Hill, knocked on  
25       the doors. They went to the decision-makers.

1           And no offense to you people, but that's  
2           the way I -- that's the way I operate or I've seen  
3           operated, and they were very successful. That's what  
4           I want to see the tribal leaders do. Because it's not  
5           going to do us any good to come back here a year from  
6           now to be still discussing these issues that we've  
7           been discussing forever.

8           And that's why I asked why it's so  
9           important to sit here and keep talking to you, keep  
10          talking to Dr. Roubideaux. Why can't the tribal  
11          leaders say: Hey, we're going up here now. Enough is  
12          enough. We need to go up here.

13          And that's why I encourage the tribal  
14          leaders and stuff. If we can't get this Contract  
15          Support Cost workgroup together and get it functional  
16          and start trying to do something -- because I fully  
17          know, Mr. Washburn, we all know, sometimes it feels  
18          fruitless to sit here and talk and just keep talking,  
19          keep going to these meetings and people keep saying  
20          the same thing.

21          It's hard times and stuff when we come  
22          here. Because you go into Indian country -- I heard  
23          tribal leaders coming over here where their tribal  
24          members are still living in these little dirt huts and  
25          stuff, they have no electricity, no running water and

1 stuff, and we sit back and we have sequestration all  
2 of a sudden hit us. I mean, you're dealing with  
3 humans out there. Human beings. They suffer every  
4 day and stuff.

5 We as tribal leaders come and we try to do  
6 this, and I'm suggesting that the tribal leaders -- I  
7 don't know how we can do it, because I've been out of  
8 the loop, but I want to see us guys drive the leaders.  
9 I'm telling you, it's time for us guys to pack up our  
10 bags and go to the decision-makers.

11 We need to sit down with those guys. We  
12 need to sit down. They invited us back to testify.  
13 What happened to that testimony? I haven't seen a  
14 report from anybody that says, okay, the tribal  
15 leaders came in, we took the minutes, we looked at it,  
16 and the majority of the tribal leaders said this. You  
17 might have 15 priorities. This is the way we finally  
18 analyzed after we got through testifying to you  
19 people.

20 I don't know where that is. But they keep  
21 coming back. You go through the Bureau of Indian  
22 Affairs, you go to the Indian Health. We all know you  
23 don't have the money. You don't control the OMB.

24 I was on a teleconference the other day.  
25 There was somebody from OMB sitting in that

1 teleconference. There was somebody from Obama's  
2 administration. What are those people saying? They  
3 heard the tribes' testimony. You had to push numbers,  
4 do this and that, say, okay, Chairman Smith from Duck  
5 Valley, you've got a chance to speak.

6 I mean, where is all of this stuff?  
7 Somebody needs to be telling us what in the H is going  
8 on, because I hate to keep coming back and pounding on  
9 you. It's not right. It's not good.

10 I can sit over here and tell you all kinds  
11 of sob stories about my tribe back there and stuff.  
12 And somebody talked about that. You know, we're  
13 getting double and triple whammied and everything.  
14 With such an isolated area, we've got no economic  
15 development. So we depend upon this.

16 We've got a signed contract with the  
17 federal government. Come on. Step up to the plate  
18 and pay us. But it's not happening.

19 And as far as I'm concerned, the tribal  
20 leaders, we need to step up and say, okay, we're going  
21 to come. No offense to you or Dr. Roubideaux or  
22 whatever, but we're coming.

23 And that's what I'm wondering. They won't  
24 talk to us or listen to us until you tell them these  
25 tribal leaders are coming or this is what we finally

1           came up with, we're trying to reach an agreement?

2                           ASSISTANT SECRETARY WASHBURN: Well, your  
3           legislators certainly have -- they will listen to you  
4           directly. And I'm grateful that you were over there  
5           testifying before the House Appropriations Committee,  
6           because they need to hear it directly from you too.

7                           Bryant said something earlier about the  
8           President and why did the President do this and this  
9           is a matter for Congress. And to a large degree  
10          that's true. But the President -- the Administration  
11          feels obliged to show some leadership on developing  
12          budgets and that sort of thing, and so the  
13          Administration has a role as well. And you certainly  
14          should be talking to the Administration. And perhaps  
15          not just me in the Administration, but also to  
16          Congress.

17                          And Congress is actually going to have to  
18          makes a decision on this or not. They may not do a  
19          budget this year. They may just decide it's too hard  
20          and throw up their hands. Which underscores your  
21          point, though, that the Administration turns out to  
22          have a big role to play in Congress or the  
23          decision-makers, because if Congress doesn't produce  
24          the budget for us, then it's up to us to figure out  
25          how to proceed. And that's the hard truth of it.

1                   CHAIRMAN SMITH:  It's interesting when you  
2                   make that comment, it's up to us to try to figure out  
3                   how to proceed.  We can't get past what we're doing  
4                   now.  And when I was back on the Hill at that time  
5                   when we testified and stuff, the congressional people  
6                   that I talked to -- and most of them were  
7                   Republicans -- and one of them:  There will be no D --  
8                   you know what's after D? -- there will be no D budget.  
9                   Whatever the president proposes as a budget, we're  
10                  going to kill it.

11                  Now, that's what I was told by some  
12                  Republicans.  And I'm not trying to demean anybody in  
13                  the room that's a Republican here, but that's what the  
14                  congressional people said.

15                  Now, if that "no D budget," and then we're  
16                  sitting here -- and I respect your remarks -- "then  
17                  we'll have to sit here and try to figure that out."  
18                  We can't even get by what we're doing, and that's the  
19                  first (inaudible) and the 35 percent.  And if it comes  
20                  next year, it's going to be a bigger percent.  And if  
21                  we can't get by this one, how in the world are we  
22                  going to get by that one?  We ain't going to get by  
23                  that one.  We can't even get by this one.

24                  So anyway, Mr. Washburn, you can tell I  
25                  hate to talk, so I'm going to give up the microphone.

1           But I'm thinking and stuff that we have to  
2 look at a whole different approach to this, because I  
3 don't appreciate coming over here and hammering you  
4 every time I turn around, contract support, and you're  
5 sitting up there, Dr. Roubideaux sitting up there.

6           Tribal leaders, let's go hammer on the  
7 decision-makers. That's who we need to be hammering  
8 on, not these people over here. Even though he is the  
9 Assistant Secretary of the Interior and Dr. Roubideaux  
10 is the director of Indian Health Services, they don't  
11 have the budget and they don't run OMB, they don't run  
12 Congress.

13           I'm saying, tribal leaders, let's get to  
14 where the decision-makers are. And I would like to  
15 see us guys convene somewhere, somehow to discuss that  
16 issue, that particular issue, and let's move forward  
17 on this.

18           And I hope you listened. I'm not such a  
19 big guy anyway, but I hope you listened to the words  
20 that I'm trying to say, because it's not working out.  
21 And, boy, if we get another hit next year, there's  
22 going to be fireworks on my reservation because then  
23 the tribal leaders are going to be faced with a real,  
24 real critical decision: Do we start cutting hours  
25 back? Do we lay people off? Do we cut services to

1 the tribal membership? What do we do?

2 And no disrespect to you and  
3 Dr. Roubideaux, but, God, Mr. Washburn,  
4 Dr. Roubideaux, we've been to you. We've been to you.  
5 Now look at what we're facing. I got the cops over  
6 there to try to take that shotgun away, and I don't  
7 want them to use it on me, but I'm in a situation like  
8 that.

9 That's why I'm saying, tribal leaders,  
10 let's change the methodology. We've got to change  
11 because Congress is changing. We can't sit here and  
12 stuff and accept status quo. It's not getting us  
13 anywhere.

14 And I, for one, if I'm still around, I'm  
15 ready to jump on the bandwagon and let's go talk to  
16 whoever we need to and quit where we're at right now  
17 with this. And no disrespect to them, but it's  
18 obvious we're not going anywhere. I don't want to  
19 keep having teleconferences. I don't want to keep  
20 coming to these meetings and keep hammering on these  
21 people. They don't have the money. They're not the  
22 decision-makers.

23 Tribal leaders, we know where the  
24 decision-makers are, and, by God, let's step up and  
25 let's go talk to them.

1 Thank you.

2 ASSISTANT SECRETARY WASHBURN: Thank you,  
3 Chairman Smith.

4 MR. STROMMER: Good afternoon. Just for  
5 the record, Geoff Strommer with Hobbs, Straus, Dean &  
6 Walker. We represent close to 40 tribes around the  
7 country, throughout the country on a variety of  
8 contract support cost issues -- litigation,  
9 negotiations -- before the BIA as well as the Indian  
10 Health Service.

11 I don't want to go over the ground that a  
12 lot of my predecessor commenters have gone over. I  
13 think there's some excellent comments made. I just  
14 have a couple points that I would like to make.

15 As I was sitting here listening to all the  
16 comments, Kevin, it struck me that, out of all the  
17 assistant secretaries in the past 20 years, you of all  
18 people are in an awkward position because, as a  
19 scholar of Indian law, you can appreciate just how  
20 miserly the Supreme Court has been in giving Indian  
21 country victories, as we were unfortunately reminded  
22 today.

23 And over the 20 years, we've had a couple  
24 of victories on contract support cost fronts, and  
25 those are victories that, unfortunately, because

1 successive administrations have been reactive rather  
2 than proactive about trying to fix the solution, they  
3 have reactive (inaudible) before the Cherokee decision  
4 was issued by implementing, along with Congress,  
5 obviously, the caps that were implemented right around  
6 then. And then now after the second Supreme Court  
7 decision, the Ramah decision, rather than trying to be  
8 proactive about fixing the problems by asking for the  
9 correct amount of funding of Congress, instead falling  
10 back to the reactive mode of asking for another cap  
11 mechanism, of course, one that is consistent with what  
12 the Supreme Court suggested, but nonetheless it's a  
13 reactive mechanism attempt to cut off the rights of  
14 tribes instead of intending to fully implement the  
15 rights that -- which is upheld in the Supreme Court's  
16 decision.

17 And that's disappointing. And I think  
18 that's vexing from our perspective because I think  
19 it's fair to say that the Obama administration so far  
20 has been very proactive on tribal rights.

21 The fact is that when the Obama  
22 administration wants to find money, it can. And  
23 there's a record of that. After all, it was the Obama  
24 administration that settled the Cobell case. That  
25 involved a lot of money, and it involved a fairly

1 significant political push on the Administration's  
2 part to solve the problem by finding that money.

3 So we know the Administration can do it.  
4 All of trust cases that were reported on earlier in  
5 the general session that have been settled in these  
6 past couple of years also reflect the fact that when  
7 the Administration puts its shoulder behind the wheel  
8 and decides it wants to fix a problem, it has the  
9 political will and it will work towards that.

10 I think part of the reaction that at least  
11 I've heard from our tribal clients and that you've now  
12 heard at the couple of sessions that I've attended  
13 where people have spoken directly to you is the  
14 vexation of having a Supreme Court victory essentially  
15 being gutted by an administration that has up to date  
16 been a very supportive administration and, when  
17 willing, has been able to find ways to fix problems,  
18 funding problems. And this is, at its core, a funding  
19 problem. We all appreciate that.

20 What makes perhaps it more vexing with you  
21 and the Bureau is that, as others have said earlier,  
22 the problem with the Bureau is so small. The problem  
23 with the IHS is larger. And so one can understand  
24 perhaps the need for a slightly different solution.  
25 Although I think my view, at least, is that the full

1 funding solution is just get rid of the caps. Let's  
2 go back to pre-Cherokee when there were no caps and  
3 let both agencies -- I think Chairman Allen and other  
4 tribal leaders have suggested -- be the regime that be  
5 in place in the future and let the agencies figure out  
6 how to fully fund it and go to Congress and ask for  
7 the right amount of money for you to be able to do  
8 that.

9 So that juxtaposition of one of the few  
10 victories in the Supreme Court against an  
11 administration that has, over the past number of  
12 years, shown tremendous support for Indian issues and  
13 been willing to fight for money, yet kind of how they  
14 reacted in the last six months with this budget  
15 proposal, really, I think is disappointing to most  
16 people.

17 I won't reiterate a lot of the proposed  
18 actions that I think others have spoken about. And I  
19 agree with them, you should reconstitute the workgroup  
20 immediately, you should ask for full funding, et  
21 cetera.

22 There is one area, though, that I'm a  
23 little bit concerned about, and Ron mentioned it  
24 briefly in his comments, and it has to with new tribes  
25 and expanding self-determination and self-governance

1 compact.

2 One of the effects obviously of what you've  
3 proposed is to not only stifle but essentially kill  
4 the expansion of self-determination contracting  
5 because there will be no new money available for those  
6 tribes that want to take over additional programs  
7 under your way of looking at this and under the cap  
8 system that you're proposing. And maybe you can  
9 respond to this because maybe I'm just not  
10 appreciating how you've addressed this, but I don't  
11 really understand how new tribes would be addressed or  
12 how tribes that have contracted a very small  
13 percentage of their programs, if they choose to  
14 contract more, how they're going to be taken care of  
15 in the year that they might want their contracts to  
16 begin. So I think that's a gap that really warrants  
17 some additional thought in how you're going to deal  
18 with it.

19 But I hope that overall you think of this  
20 more in terms of a legacy issue. It would be a  
21 feather in the cap of the Obama administration to be  
22 able to say at the end of the Administration: We  
23 licked Cobell, we licked all of these problems, and we  
24 also, by the way, solved the Contract Support Cost  
25 underfunding problem and we have a system in place for

1 the future in which we could assure tribes that they  
2 will receive the full amount of administrative costs  
3 they need to administer these programs.

4 So that's it. Thank you very much.

5 ASSISTANT SECRETARY WASHBURN: Thank you.

6 We have a little more than ten more  
7 minutes, so we'll need to wrap it up.

8 UNIDENTIFIED SPEAKER: I want to reserve 30  
9 of it.

10 (Laughter)

11 MR. MICKLIN: Will Micklin, Ewiiapaayp  
12 Band of Kumeyaay Indians, CEO, here for Chairman  
13 Robert Pinto, Sr. He couldn't attend the conference  
14 and wanted me to -- just to give you a snapshot of a  
15 tribe in east San Diego County, 5,570-acre  
16 reservation, 10 acres in a small, rural,  
17 unincorporated portion of the county in Alpine. And  
18 19 miles east of that is the main part of the  
19 reservation. We're between 4800 feet and 6300 feet in  
20 elevation dominated by three ridge lines with a narrow  
21 valley, which is the habitable land, roughly about  
22 2 percent of the total land area that is useful for  
23 housing and other purposes.

24 I just wanted to give you an idea of the  
25 impact of the caps on a tribe. We received the "Dear

1 Tribal Leader" letter. Not quite sure how to respond.  
2 We recognize the cap number and we recognize that we  
3 would run up against that number for FY '14, and if  
4 the interim status changes and it continues -- the  
5 policy continues into '15, we would certainly exceed  
6 that number.

7 We're hard -- it's hard pressed to -- we  
8 don't know how you derive that number, so it's hard to  
9 comment on it other than to say it would be a problem.  
10 And exceeding it, I imagine that would a trigger  
11 shortfall and we'd have to deal with carryforwards in  
12 subsequent years. We can only estimate that from -- I  
13 guess from FY '12 to determine what the FY '14 rate  
14 would be and whether or not we meet that cap or exceed  
15 it.

16 I guess the perspective that we most wanted  
17 to give to you is that if you're making federal Indian  
18 policy based on budget category, then it's difficult  
19 to know the full consequence of the impact and  
20 probably the unintended consequence of policy by  
21 budget line item.

22 We've been sorely impacted by  
23 sequestration. We manage our cost pool very  
24 efficiently. We've been very conservative. We even  
25 imposed salary reductions on our tribal officials. If

1 you've ever done that, that's for a CEO of a tribe,  
2 that's not the easiest thing in the world to do.  
3 But we've done that.

4 We've been very efficient, so the  
5 flexibility in our pool and the ability to accept the  
6 caps is constrained by that as well as our effort  
7 to -- while still being efficient to expand our base  
8 and look at more programs that we can effectively  
9 manage that goes to the real core mission of the  
10 tribe, which is preservation of our tribal lands.

11 These are original Indian lands. These are  
12 historical lands. These are part of the geographic  
13 area of Ewiiaapaayp, meaning Leaning Rock. It's a  
14 stone formation on the north ridge line of the  
15 reservation that was the geographic touchstone for the  
16 migration from the desert to the ocean and back as the  
17 seasonal migration.

18 So we are -- it's a pristine land.  
19 Unfortunately what comes with that and its remoteness  
20 is we have no infrastructure. We have dirt roads that  
21 are relatively unmaintained because of the limitation  
22 on the roads monies. We have no utilities. We have  
23 no electricity. We have no telephone. We don't get  
24 cellular, radio. We have no landline telephone there.  
25 We don't have any wastewater treatment system. We

1 just pump groundwater for our water. And we use  
2 septic.

3 And so we are not alone in that. Barona,  
4 close to us, is the same as us. There's another three  
5 or four or five reservations in California that are  
6 similarly situated and having no infrastructure or  
7 utilities. So the ability to create enterprises that  
8 generate general fund revenues to supplement the  
9 federal programs is extremely limited. We basically  
10 do it out of the pocket of our tribal members. It's  
11 extraordinarily expensive to live up there. When the  
12 Chairman comes back and forth -- the last time, after  
13 a storm went up there, he got \$300 of damage to his  
14 truck going back and forth.

15 So it's very challenging. It's a  
16 landlocked reservation. We don't have legal access to  
17 (inaudible) right of way. So there's an extreme  
18 consequence when you just look down the line item of  
19 the budget. We were severely impacted or will be by  
20 MAP-21. That's going to reduce our transportation  
21 funding. Where is that going to come from? Going  
22 back and forth on the reservation, we can't just throw  
23 up our hands and say, well, we don't have money to  
24 maintain the road. Tribal members have to go back and  
25 forth. We'll find a way to do it. It's going to come

1 out of their pocket. And conditions will be worse and  
2 more expensive for repair.

3 So we don't have that flexibility for those  
4 unanticipated events. Costs are more expensive.  
5 Costs of travel are more expensive. And (inaudible)  
6 costs that are required for funding our programs and  
7 maintaining compliance with A-87 and all the other --  
8 I know it's being consolidated, but all the other  
9 numbers -- I think it was the new numbers -- are just  
10 getting more expensive.

11 This was a tribe that really refused direct  
12 service from our former chair. When I got there 20  
13 years ago, they really didn't tolerate the Bureau  
14 being up there because they didn't want direct  
15 service. They were sovereign. And it was only  
16 through self-governance that we really participated in  
17 the program because it was the tribe determining its  
18 own affairs.

19 And so the self-governance program has been  
20 a real -- it really speaks to the core mission of the  
21 tribe. And so we support it, we support it with other  
22 tribes, and we support the intertribal effort to  
23 maintain it.

24 So we are concerned. We know you're a  
25 tremendous advocate, Kevin and Larry, and certainly

1 are friends to the tribes, and we know that you have  
2 to advocate on our behalf to those that are the  
3 ultimate policy-setters and decision-makers in the  
4 Administration. So all we can do is tell you and do  
5 our best to communicate that this has, we think, an  
6 unintended, significantly adverse impact on the tribe  
7 because we make up costs in many other areas. And  
8 when we are going to be buying the result of policy  
9 caps and therefore trigger shortfalls on our  
10 recoveries, because the cap is on indirect, and have  
11 to supplement it from a TPA, and our TPA is fully  
12 subscribed, and so we're going back to the tribal  
13 pocket for this, it's going to rob other categories  
14 that are essential to the tribes and limited by the  
15 capacity of the tribal members to, themselves, fund  
16 those activities that we had thought that was part of  
17 our agreement for maintaining and managing our own  
18 affairs under the program.

19 And so we fully support all the testimony  
20 here from the tribal leaders and the experts like  
21 Lloyd and Geoff and certainly Ron and President  
22 Thomas.

23 And so the message we hope to be carried  
24 back is there are many tribes in our situation where a  
25 cap on the contract cost support will mean a domino

1 effect on many of the areas that will deprive us of  
2 essential activities, essential services that are paid  
3 by limited funds that are already existing.

4 So when you look at the dollar amount for  
5 us, you can't just look at that dollar amount. It is  
6 associated with so many other things. And one of the  
7 things that really kind of wrangled our leadership was  
8 when folks were -- I'm talking about the effects of  
9 sequestration. And one of the examples was there was  
10 a buoy out -- I guess it was in the East Coast, and  
11 the guy that rode out there and fixed the SCADA  
12 instruments on there had to go out there every two  
13 weeks instead of once a week. And the impact on that  
14 type of program is different and must be judged  
15 differently than the impact on Native people that  
16 depend on these services. It is a totally different  
17 quality of impact.

18 We do see Fish and Wildlife Service and BLM  
19 and I guess Minerals Management, whatever they're  
20 called, and others that have benefitted from increased  
21 funding, and we don't have access to tribal shares  
22 from central office. So we really don't have recourse  
23 to increasing our funds or the ability to increase our  
24 funds under this cap. It really has significant  
25 effects on us.

1           So I just wanted to convey that to you, and  
2 we'll provide you something to the record. And any  
3 help we can be in your efforts to communicate to the  
4 administration, we would be happy to assist you in  
5 that.

6           ASSISTANT SECRETARY WASHBURN: Thank you,  
7 Mr. Micklin.

8           And, I'm sorry, this has to be the last  
9 one. I fly commercial, and there's a plane I'm going  
10 to miss if I don't get over there soon. I've got to  
11 go to Alaska, so I'm anxious to get up there.

12           MR. SANGREY: Good afternoon,  
13 Mr. Secretary. I'm Richard Sangrey, Chippewa-Cree  
14 Tribe, Rocky Boy, Montana. And I'll be brief.

15           I just have a question after listening to  
16 all the tribal leaders here who presented fine  
17 testimony. But does the administrative's FY 2014  
18 provision amend damage remedy which Congress provided  
19 under Public Law 93-638 Section 110 for contract  
20 underpayments?

21           ASSISTANT SECRETARY WASHBURN: I think that  
22 answer to that is yes. That's a legal question. I  
23 think that the answer to that is yes. The Ramah case  
24 is a real victory for tribes. And because of the  
25 Ramah case and because that case was litigated and won

1 by tribes, tribes have millions of dollars coming to  
2 them. And there's some issues in working out the  
3 damages, assessments, figuring out how you formulate  
4 the damages, and that's, frankly, been very  
5 frustrating, but it is moving forward. And it's a  
6 huge victory. And so that's going to be -- there's  
7 going to be a lot of payoff to tribes because of that  
8 victory.

9 The question sort of now is, moving  
10 forward, what's in store for Contract Support Costs.

11 And you asked me a legal question, and so  
12 I -- and so it's a very narrow question, and I'm not  
13 allowed to use my law license in this current job, so  
14 I'll leave it to the lawyers to be certain about that.  
15 But that's the best I can do with the answer to your  
16 one question.

17 MR. SANGREY: Just show me the money.

18 ASSISTANT SECRETARY WASHBURN: Fair enough.  
19 Thank you.

20 Let me say one last thing or a couple last  
21 things, and part of it is this: Thank you all for  
22 being here. And a lot of people are gone, but I'm  
23 grateful to them, too, for coming here and sharing  
24 their thoughts about this.

25 This needs to very much be a conversation

1 between the Administration and the tribes. And you've  
2 given me the part of that conversation, and it's my  
3 job to go back to Washington and advocate and talk  
4 within the Administration and make sure everybody  
5 hears these arguments.

6 I've got a bunch of takeaways from this.  
7 I've got a bunch of stories to tell about this. But  
8 I've got a bunch of specific things to do too.

9 And the first thing I hear from you is that  
10 I need to ask for full contract support funding. And  
11 there are a bunch of smaller things as well. So  
12 reconstitute the CSC workgroup, and we definitely need  
13 to do that, and we will do that and get them a  
14 meeting.

15 We need to get you the methodology and  
16 procedure for determining the amounts that we did put  
17 in the table, and we will do that. We will ensure  
18 that that's done either directly or through the  
19 contract support workgroups so that you can see what  
20 happened there.

21 We also -- I mean, this is a constant  
22 battle. We need to -- as Ron suggested, we need to  
23 make the system more effective. So what money there  
24 is going out needs to be going out efficiently and  
25 quickly and when tribes need it. So we will continue

1 working on those kinds of things as well. And I've  
2 got a bunch of other sort of very specific takeaways.

3 But we hear you and Indian Affairs hears  
4 you, and we will take these messages back to the rest  
5 of the Administration and continue to advocate. And  
6 we think, as you've heard me say, self-governance and  
7 self-determination is the most effective federal  
8 policy that we've had with tribes. We need to give  
9 tribes the tools to do it effectively.

10 Money is a hard thing these days, and it's  
11 hard in Washington and it's hard on the reservation  
12 and -- but we need to give you the tools so that you  
13 can succeed when you do take over federal functions.  
14 And we will continue to be working on this problem  
15 and -- to see if we can come to a better approach in  
16 the interim solution that we have.

17 I want to thank all of you for being here,  
18 those of you who didn't speak that are staying very  
19 educated on this process. I'm grateful to all of you.  
20 And thank you. Thank you all for sharing your wisdom  
21 with me today. Thank you.

22 (Session concluded)

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1 STATE OF NEVADA )  
2 COUNTY OF WASHOE ) ss.  
3

4 I, BECKY VAN AUKEN, a Certified Court  
5 Reporter in and for the County of Washoe, State of  
6 Nevada, do hereby certify:

7 That on Tuesday, June 25, 2013, at the  
8 Atlantis Hotel Casino, Reno, Nevada, I was present and  
9 took verbatim stenotype notes of the CSC Breakout  
10 Session and thereafter transcribed the same into  
11 typewriting as herein appears;

12 That the foregoing transcript is a full,  
13 true and correct transcription of my stenotype notes  
14 of said session to the best of my ability.

15 Dated at Reno, Nevada, this 8th day of  
16 July, 2013.

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20 BECKY VAN AUKEN, CCR 418  
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