

## **Tribal/Interior Budget Council**

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### **Contents**

Call to Order/Opening Prayer .....	1
Roll Call .....	1
Opening Remarks.....	1
Report from Tribal Caucus .....	3
2015/2016/2017 Budget Update.....	9
Mandatory Spending .....	14
Report from BIA Director/RDs Meeting.....	19
OST Update .....	20
Second Day, November 6, 2014.....	23
Election of Second Tribal Co-Chair.....	23
Contract Support Update.....	23
Remarks from OMB .....	31
Remarks from Special Trustee .....	39
Tribal Access to Federal Aid in Fish and Wildlife Restoration Acts.....	41
Presentation from the Bureau of Land Management .....	42
Justice Services .....	44
FEMA Update.....	44
Tribal Data Exchange Update.....	47
Resolution on Federal Aid in Sport Fish Restoration Act.....	48
Indian Education .....	48
Trust Services.....	51
Old Business, New Business, Review Dates Future of Future TIBC Meetings .....	54

### **Call to Order/Opening Prayer**

Invocation by Tino Batt

### **Roll Call**

### **Opening Remarks**

CHAIRMAN ALLEN: We appreciate everybody being able to make it today as we are moving into a new playing field in our political environment after the elections. In the aftermath of the election and people's remarks in terms of their thoughts about the election: it's all about leadership and direction. Some have characterized it as new direction and meaningful leadership. We're here talking about the BIA budget and other programs that affect the welfare of tribes and our communities. Many of us have experienced shifts in leadership over the many years of different congresses and different administrations.

One constant in this room is Indian country's consistent leadership and consistent direction with regard to what our job is in terms of representing the tribes from our respective regions to make sure that we're helping advance our mission, which is really about self-governance, about self-reliance, about meeting the essential needs of our communities and the appropriate kind of stewardship over our resources in our respective communities.

Today and tomorrow, we'll have the leadership here of the Department of Interior, and OMB will be over here tomorrow talking to us as well. I expect us to come up with some suggestions and directions that hopefully will help us move the agenda, find common ground, and find a way to continue to make a case for the kind of resources that we need in Indian countries.

MR. KEVIN WASHBURN: Thank you for leaving your families and your responsibilities to come and meet with us and help us through a budget process. We know it's a sacrifice and we really appreciate all of you doing that whether you're tribal officials or BIA officials. It is a new day. This process is different than it was yesterday in some respects because what this process is about is helping us to prepare our president's budget. The leadership that all you provide is exceedingly important. One thing about this process that will remain important even if they take the president's budget and toss it in the trash when they start to figure out budgets is getting us all to talk about these issues. We still need to prepare the president's budget, and that still gives us a lot of opportunity to talk about the issues that Indian country faces.

We are starting our formulation of the FY 2017 budget. The 2016 budget is at OMB, embargoed and Congress has not finished the 2015 yet. We don't know what we're going to get out of Congress. Though I've heard that we might get a CR or we might get an omnibus or we might get a CROmnibus.

One of the things that keeps coming up is the idea of mandatory funding. Tommy and I were talking about what needed to be discussed at this meeting when we're at the very beginning of a budget formulation process for 2017. We thought let's talk about the idea of mandatory funding to see how complicated and complex that idea is. I think everybody instinctively thinks it's a great idea, but it is very complicated.

For example, does TIBC have a role if there's a mandatory budget process? If it's a mandatory budget, then what we do is we try to figure out where should we prioritize budgets? Mandatory budgets don't work that way. They usually work by formulas, so you don't need to prioritize things. The formula spits out what the answer is, so there's issues like that. And what would the formula look like if we were going to have a mandatory budget? And those are kind of hard questions. And I have to say that I think there'd be some conflict within tribes and among tribes about what that formula would look like if we have a mandatory budget.

It's come up a little bit in the CSC context. The CSC workgroup has given us fantastic ideas. And we've had several tribal consultations and then meetings with the CSC workgroup about and that their idea is mandatory funding for contract support cost, so we've been vetting that around in a much more narrow sense, too. And we're trying to come to agreement with HHS, IHS to make a proposal about what we do about CSC going forward. We strongly believe we need to fully fund CSC. That's if we do contracts with tribes to perform services, we need to fully carry out those contracts. There's no question about that, but how you budget to get there is a little bit of an open question. So we are working through that issue and trying to figure out with OMB and with the IHS how do we do that. So those are some of the things that we are talking about and that we will be planning to share with you.

Deputy Assistant Secretary Larry Roberts is here. I've got some travel, but we've prepared what we're going to do and what the sessions are. And I will certainly get lots of feedback from you, but we're very much at the beginning. And you all will be heading out to your regions to do meetings in the regions over the next couple of months to try to figure out where you want to be for the FY2017 budget.

One of the other important things is getting the money out to tribes. We've faced some challenges with payment systems and how many places the money has to go before it actually reaches the tribes. Tommy's going to give you a little bit of an update on our funding stream efforts to just to try to reverse engineer that, so we can get the money going straight to the tribes or in a much more direct fashion. Indian education has been a real high priority of the White House and of the Secretary and all of us really. And so we want to make sure you all have a sense of where that is because it's so important, and it's become a very high priority.

There is a will to try to fix that now and so there's some significant reform efforts. We've gotten a lot of tribal input, but we need a lot more tribal input. We need everybody to be engaged so that they know what's going on in case you get questions back at home or in case you need to weigh in on something.

I'm going to be here for about a couple hours, and then I'm going to be out. So if you guys have things that you need from me, let me know or come pull me aside or whatever you need to do because this is part of the reason being here. We can all use the phone anytime, but part of it is it's nice to be face-to-face with each of you

- Motion was made by Sam Thomas to adopt the agenda as a guide. Jimmie Mitchell Seconded. Motion carried.
- Motion was made by Sam Thomas to adopt the minutes from the previous meeting. Jimmie Mitchell seconded. Motion carried.

S. THOMAS: You mentioned mandatory funding. We would like to know what kind of dollar figure you're thinking about for FY '17. If we were to modify TPA to formula-based budget would be, I think it could be done relatively easy by a formulation of a negotiating rulemaking team possibly coming out of this body.

WASHBURN: I don't have any prejudged ideas about that. Our budget now is \$2.5, \$2.6 billion, in that ballpark. Most mandatory funding in the federal budget is done by specific formula, so what would happen if we did a mandatory budget? We wouldn't include it in the DOI budget. It would be coming out of the mandatory side of the budget. And so it wouldn't be part of the DOI budget anymore. It would be determined by some formula.

And I don't know what the formula looks like, so that's my first question. Mandatory funding, how much is that? I don't know because it's been what the formula says. And is it a certain amount per tribe, or is it a certain amount per Indian, or is it a certain amount per region, or is it a certain amount per function? The formula would be, I think, fairly complex, and all those things need to be teased out. I think it would probably take a fair number of meetings and conversations. It would necessarily result in compromises because, we all know tribes in different regions in the country have vastly different needs, so what they wanted out of that formula might be very different. But that's why I wanted to have a sense of what might be involved just to smarten the conversation.

### **Report from Tribal Caucus**

CHAIRMAN: A lot of these issues including this one rose this morning. We raised the issues this morning that we're looking for someone who would step into the co-chair role. In our caucus, we talked about a number of issues. One of the topics that came up first was that the crosscut matrix of the \$19 billion. That's a topic that we think requires further conversation with you and OMB regarding how we can better break that budget down so that tribes have a better ability to know how they can access that money. So you mentioned the \$2.5 billion, \$2.6 billion in BIA. There's \$4.4 or \$5 over in IHS. That means the remainder is spread out to all these different federal departments and agencies. And the concern we have is who's accessing them, how can we access them, what barriers are out there that does not allow the tribes to access those monies, and so that was an important agenda. And we feel that the Bureau and the department should assist us in making that happen.

The second topic that was raised earlier about the resources in Fish and Wildlife. The question is: what are the legal or statutory impediments that prevent the tribes from being able to access those revenues? We're trying to look for new revenues to deal with our natural resource responsibilities.

The third topic we raised is as the Stafford Act was amended and enhanced the tribes' ability to go through FEMA and to access the declaration of a crisis in Indian country. What's the bureau's role in assisting tribes in declaring these crises and how we can access the resources and what role you can play to assist in that process?

The fourth topic was regarding the TDE, the Tribal Data Exchange Project. Number one, we want to get from the department reaffirmation that you still support this initiative and that the \$220,000 that we've been allocating to move this project forward is still there. We need to update that charter. It identifies seven tribal representatives and six federal representatives. We've asked the two federal representatives that were with us yesterday to go back and talk to you, Larry and Tommy, to find out who should be on it on behalf of the department.

The genesis was because the Self-Governance Act did not require reporting requirements from the 250 - 260 tribes that are in self-governance. But in recent discussions, it became clear that this kind of analysis and data collection needs to be inclusive of 638 and direct service tribes. We would like two of the members of this committee of the seven, be representative of 638 and direct service so that the data is going to be a good cross-section of all those different programs that affect our interest.

We'd like to see OMB participate in these discussions with the TDE process to enhance their comfort that we're gathering data in the way we mapped out the criteria. It's going to be effective within your interest, OMB's interest, and the tribes' interest so that it's user-friendly and it's meaningful.

The fifth is regarding ICWA. In the president's budget, you added \$5 million to deal with the ICWA responsibilities, so you're bumping up the current base from the previous year from around \$10 million or \$11 million to \$15 million or \$16 million, so that was the first increase that that program has gotten in 10 years. To say the least, ICWA is a big deal to all of our tribes across Indian country.

We want to raise this question, and it's going to be important with regard to the TIBC process. We're now going through preparation for FY '17, so we got regional meetings being conducted out there. We're hopeful that the regional directors in conjunction with the tribe and their respective regions are coordinating so that they don't conflict.

The next item we had was we had sent off a request to OMB that it needs to have a tribal liaison.

On CSC, this is an issue where the CSC workgroup has communicated with you a couple of times. One of the objectives was to make sure that the DOI, BIA CSC is collaborating with IHS so that the policies are consistent.

And the last item really was that the political climate has changed, and that changes the game here with regard to the budgetary objectives of the tribes.

GREG ABRAHAMSON: I was to ask Kevin if he could send to Secretary Jewell or ask Secretary Jewell to send out a letter to all governors on the ICWA consultation with tribes in their states, similar to the HHS former Secretary Sebelius did. We need states to comply with ICWA. So if we can get a letter going out especially since we have a bunch of new governors, too, there so make sure that they deal with tribes on this.

WASHBURN: Yeah, thank you. We'll see what we can do. If you guys have any suggested language for such a letter, we'd love to see it. That might facilitate that. We're trying to make ICWA work better so that's a great suggestion.

CHAIRMAN: On these regional budget meetings, we need the presence of representatives of the CSC workgroup because CSC crosses everywhere in Indian country.

CARROL: On mandatory funding, if we dream and vision enough, it can be accomplished. If we can come from a period of termination and assimilation to self-determination and self-governance, moving from mandatory discretion, is at least a possibility. Also, we understand the relevance of having the type of data that's being requested right now to substantiate funding to Indian country. What we would like to see of equal concern is data that relates to impact that that investment is happening in a much broader fashion. So if you look at foreign aid spending in the measurables of whether or not that's a good investment, how is the United States looking at the funding that it's providing to Indian country through those same lenses?

So I know that one of the things that were announced three years ago was the addition back to the BIA structure of the economist. I know that that person was responsible for doing the labor force report. One of the things that we would like to see that economist do is to take a closer look at what that impact is on these dollars going to Indian country on not only surrounding communities but on America as a whole. We need to know the impact of the United States' investments in Indian country in terms of strengthening tribal governments, growing tribal governments, improving education, improving social service issues, all those sorts of things rather than reporting on numbers that are very local micro level.

CHAIRMAN: Do you still have an economist employed? That came up under TDE initiative as well. What is the kind of criteria we would be looking to that is quantifiable to show the effectiveness of these federal resources to our communities with respect to self-governance, self-reliance, carrying out our stewardship responsibilities, et cetera. We need that individual more engaged with us.

WASHBURN: The \$19 billion Indian crosscut figure is kind of a controversial figure although I'm sure that most or all of that \$19 billion goes in some way to help Indian country. But it doesn't all go directly to tribes and so it's kind of controversial. It's not fully satisfactory to say that \$19 billion is going to Indian country because some of it goes through states first. And then it's for the benefit of tribes but who knows how it gets there and that sort of thing. It's hard to know what to include and what to not include in that crosscut, so that's an issue.

The money is accessible in different ways. The DOJ has around \$400 million every year, with most of it through grants. HUD has \$650 million for housing, but that's all formula funded. I don't know what parts of Indian Country get left out. The Alaskans are getting left out of a lot of our stuff. We see that over and over in tribal courts, and police, and Indian education and stuff. But I think that is an important task to get a better and clearer picture of what that \$19 billion is and how much of that goes directly to tribes. We are trying to make this a clearer figure. In some respects we're chasing our own tails, because you don't want to spit out a lesser number in some respects because there is money that states are supposed to spend in Indian Country. You don't want to let them off the hook by not including it in the crosscuts. It's a little bit of a political task to determine what these crosscuts ought to include and that sort of thing.

CHAIRMAN: OMB acknowledged that it was the best and only way that they could gather that information without knowing the details of how that money actually affected or was accessed by Indian Country.

In our tribal caucus, the question was raised about the president's Advisory Council on Native American Affairs and how can a document be developed that is clearer, cleaner, and more transparent. It's not just at OMB, because OMB, in a way, is kind of number-crunching as opposed to getting something, a document that would be more useful to tribal leaders.

WASHBURN: Where that document comes from largely is taking the green book of every single agency and then pulling out the stuff that's Indian country related, and then sticking it all together and totaling it up at the bottom. I mean, it's fairly substantive. It's as transparent as the budget request is. It's pretty transparent in that respect, but we could do more. This also relates to the OMB request about a tribal liaison. OMB has been much more engaged on these issues since the Native American Affairs Council was created. When the president created the Native American Affairs Council, he asked the council to consider budget issues. One of

the things that has been going on is that OMB has held some historic meetings. Given that there is a \$19 billion crosscut, you'd think that agencies would have talked to each other about what their programs are. They've never really done that. But Secretary Jewell asked early on that OMB start to lead a process to get agencies to talk to one another about how they spend that money.

OMB had called some meetings of six or seven different agencies that have significant Indian programs to come in and share what they're doing. There are some steps going on and I do think OMB is fairly responsive on this. We will hear from FEMA, which is at the Department of Homeland Security. BIA interacts with FEMA a bit.

On contract support costs (CSC), we went out in joint consultations and then separate consultations and we came up with some ideas. We've been hashing through them together, but we haven't come out of the room yet to tell OMB what we want to do. The outcome is going to be what is in the budget. Because with OMB, we're not allowed to talk about the proposal until it comes out in the budget. This is similar to when we do tribal consultations about a rule: the answer is whatever the rule said. We listen to tribes and our job is to put the rule out. Running a specific response to a specific comment is a secondary thing.

So our goal, our purpose was to deal with the 2016 budget request. What are we going to do in the 2016 budget request? Frankly, it got hijacked by 2015 issues and largely because HHS -- IHS, their contract support cost money came in low apparently. We fully funded it. So 2015 is not an issue for us. But HHS didn't have enough money in their 2015 request. Suddenly we got hijacked and we started talking about 2015, and that's not our task. So that whole effort into that, getting round and round the axle on 2015 stuff which is not relevant to what we're asked. We're working with the CSC workgroup to try and know what does our 2016 request look like? We haven't been able to move as quickly as we wanted to on 2016. Being in the federal government is just as frustrating as it is outside about how slowly we move.

COMMENT: It looks like a lot of the different programs have gone through a grant streaming-lining process versus a contractual giving process. It's one way of getting out of having to pay the indirect rate to the tribes as going through that other backdoor process, and it's not really attractive. Sometimes the tribes have to eat some of those administrative costs.

WASHBURN: Yes, that's the downside of grants. I've got a good understanding of that these days. We tend to do grants whenever it's one-time money or it's a one-time program, or a very specific one-time program. And then, there are some parts of the government that only do grants. We have this robust compacting and contracting system for many ongoing purposes, but a lot of the agencies do all their money through grants. So it just varies.

SEKI: We were talking about the \$19.5 billion that goes to Indian Country and you mentioned that some of it goes to the states. Why would they go to the states? It should go directly to Indian Country because some of us tribes have difficulty with the states to get the money.

WASHBURN: For example, 90 percent of Indian children are in public schools in states, not Indian schools, but public schools. So at Red Lake, you don't have an Indian school, you've got the Red Lake School which is a Minnesota state public school system school, right? Department of Ed money goes to that school and it mostly serves Indian kids but it doesn't go to the tribes. It goes to the school system, because it's the public school system that's operating on Red Lake and so that kind of thing. That's still money that's going to Indian country from the federal government. It's just taking a detour through the state in some respect.

SEKI: Yeah, but that's still a roadblock. We don't get much funding for our public schools that's why I'm saying it should directly go to the schools.

S. THOMAS: Has there been any discussion within the budget talks about including Public Law 280 states in tribal court funding?

WASHBURN: Yes. There is a little bit of money for tribal courts. I mean, there is some federal money even in Alaska that goes to tribal courts. But we don't fund, for example, law enforcement and any Public Law 280 states. And even that, every time I say or make a broad statement there's always like an exception. But generally, the notion is the federal government through Public Law 280 has delegated those responsibilities to the state, so the state is responsible for those duties. So we don't pay the state money to do that work, they have to do it. But we don't give the tribes money to do the same work that the states are already been delegated.

I don't necessarily think that's a good thing. Alaska has serious public safety issues. That's a place where we would love to have federal funding of law enforcement and federal funding of tribal courts, but given our limited funding, decisions that have been made in the past is that we wouldn't generally fund those kinds of functions in Public Law 280 states. And it's something we talked about all the time now because we would love to do it.

S. THOMAS: The Department of Justice and they're coming here tomorrow. But the thing is that we're being held hostage by the states' constitution not identifying tribal sovereignty within our state's constitution.

WASHBURN: Yeah. But let me just say we don't necessarily agree with that. They may say in their state constitution, but that doesn't mean we don't think tribes in Alaska have sovereignty. The United States believes that tribes in Alaska have sovereignty. We don't fund it as well as we should and sovereignty suffers when you don't have the resources to exercise sovereignty, and we know that. But we don't agree with the premise that tribes don't have sovereignty. We just disagree with the State of Alaska on some of those issues.

COMMENT: Regarding the PL 280 statement, what about the optional states and then what about those tribes who are treated just as a 280 state, such as Texas?

WASHBURN: Yeah, or Kansas or New York. We generally don't provide funding for law enforcement in any of those optional states generally. There are some tribes that get law enforcement funding because we were providing it before this policy was adopted 15 or 20 years ago, and they had compacted for their money. So they're getting law enforcement money and they may be using it for law enforcement. Because they've got flexibility in their compacts, they may be using it for something else. So there are a few tribes in those states that are getting that kind of money because they got it years ago. We don't take money away from tribes. But the policy has changed. We don't do that now generally. Law enforcement is underfunded everywhere even where we do provide that funding. Stretching that out even more is just sort of untenable. There are a hundred and some tribes in California that could potentially be exercising law enforcement. There are 220-some villages in Alaska that could be providing that law enforcement. If we have to provide police departments for all that, then we would be even more underfunded in the places where we do provide law enforcement. And these are the agonizing choices that we face every year.

RONNIE THOMAS: Well, on that one how would we reach resolution to that matter even just to provide some type of funding to help assist them with their law enforcement?

WASHBURN: If we get a couple more billion dollars we could provide some resolution to that. We just don't have enough money to go around. Those tribes that we do fund, they're the only governments that can provide misdemeanor law enforcement jurisdiction. And so they have to have money or even misdemeanors are not going to be prosecuted. In PL 280 states and similar states, the state can prosecute. It may not be doing an adequate job, but at least somebody has the power to do it and the resources to do it. I don't think it's a great answer but it's the answer that we have.

CHAIRMAN: And I guess dovetailing to that response, at our last year process where we were preparing for '16, the notice went out to identify your priorities but also identify your unmet need. I think one of our challenges that we raised with Tommy last time he gave that report on that topic was that we probably need to figure out a way that we create a consistency of identifying what that unmet need is. In Alaska, California and other places where there is deficiencies, we need to find out what that unmet need is and then we need to be able to quantify it in a way that passes the red face test.

MR. GREG PITCHER: When dollars are funneled through states, are they being made accountable that these are going to tribal folks or to tribal programs?

WASHBURN: Sometimes it is actually a significant amount of money oftentimes. For example, one of the areas where this is happening is for foster care for children and IV-E funding from HHS. And that Title IV-E funding is actually quite substantial. There are a few tribes that are saying we want the money sent straight to us because we want to run those programs, and that's something that we are supportive of and we're trying to work with HHS on these kinds of issues.

Sometimes it goes from the state to the foster families that are taking care of Indian children, and we have some concerns about how that works too. One of the concerns is that the state isn't doing enough accountability and enforcement in that activity. So we have been wrestling with that because that is something that states should be doing. When there's federal money that's going through the state, we think they need to be talking to tribes more and making sure that there's accountability of the state. I mean the state needs to be held accountable.

MITCHELL: Are there any standards on the effectiveness of federal dollars used by states to work in cooperation with tribes? Or if anybody is even looking at that as one of the criteria to make them eligible or maybe even to discern whether or not those funds will be better utilized in the tribal communities themselves?

WASHBURN: We should make GPRA states comply with GPRA. Do we do that? Because I know we have to comply with it, it is a big hassle. But, yeah, we should hold them to similar standards for sure. I don't know if they have to comply with GPRA honestly. They are spending federal money. So I don't know. We should look into that.

WASHBURN: On the Tribal Data Exchange, data is important. That's the world that we live in now and I think we resisted it sometimes. But ultimately, we all ought to be demanding data. Now we're saying we're demanding data from the state governments to make sure that they're complying with their responsibilities. Everybody is entitled to know whether trust responsibilities are being met. We can't answer that question unless we have data, and that's where I finally come to make peace with all these damn requests for data. I think in part we need data to make sure the federal government and maybe other governments are meeting their responsibilities to Indian Country. The problem is the data requests fall on us. But we ought to all be demanding clear information about these things.

The Tribal Data Exchange where tribes are trying to do it and not maybe make it accessible has an important role to play in providing a forum where tribes are comfortable sharing that data. But having the data is helpful to us, too, because we can make a better case about if you've got an extra dollar in federal money, here's why we should get it. Here's what we can do with that money rather than putting it in something that's not in Indian Country. So we do need the data to make our case, and that's ultimately where I've come on this.

CHAIRMAN: I just want to remind you that unfortunately one of the shortcomings of the Self-Governance Act that we didn't think about when we advocated for it was that we eliminated what we thought was a lot of excessive and ridiculous reporting requirements of all these different programs. We eliminated them completely, so we unfortunately created a huge void in the right kind of data with regard to programs,



whether it's public safety stuff, whether it's Indian child welfare and so forth. All we're trying to do in that project is just make sure that we can get it done. Tribes have always been worried that their data will be used against them. In other words, specifically if they're contributing X dollars for a federal service or law enforcement, if it's a million dollar project and you're given \$500,000 and they're putting in \$500,000, they do not want the federal government to think that, okay, you don't need \$500,000 when it's actually a federal responsibility. That's the challenge, so we definitely are trying to get that accurate data on what's going on out there.

### **2015/2016/2017 Budget Update**

[\(Link to presentation\)](#)

THOMPSON: On FY15, DOI does not have the greatest track record of not being controversial in the budget arena with some of the bureaus within it, not to mention EPA and some of the other sister agencies that are under our appropriation bill. If they were to extend anyone under a CR, we will probably be a decent candidate for that at this point.

As everyone is aware, we're under a CR through December which is only three weeks away. We received 19.73 percent for that period, but at the same time, they did a 0.5 percent across-the-board cut. No specific reason as to what their across-the-board was for other than that's what they needed to balance the CR as to the resources they had.

One of the things that we are not certain on in the last bullet there, we're still under the Budget Control Act, and that's a 10-year process that has caps in it. If nothing changes from the projections that went forward, there is a 7.3 percent sequester amount that would be required. Whether that's real, no one knows at this point. The worst-case scenario, that's what we're looking at. Whether they come back with a budget compromise like Murray-Ryan to where they identified additional revenues or come to some agreement on the defense budget because they all are interconnected that drives whatever that percentage is to keep it under the cap.

This is just make you aware that that issue is still out there, and we will get you the most current information we get as we go forward. We'll send that out to you in sort of flash alerts on the email. So it's important to give all of your email addresses to your regional directors so that we can get that put together, and we will, at least, keep you informed as we go through this process of where we think it's heading on that.

Sequester would be an additional 7 percent. That was a clarification I got this morning, that it was additional 7 percent. I was thinking it was 2 percent on top of the original 5 percent that we did two years ago, but the Murray-Ryan extended it. If you look at the graph of what we were talking about, a couple of years ago, where we talked about it was accumulative, the amount of funds that would be required. The Murray-Ryan just took a pause for two years, now, we're back on that same path to bring it up to 7.3 percent.

S. THOMAS: Tommy, I thought tribal programs were going to be held harmless from sequestration. Is this still in the works, or do we have to go back and try to get that at a further time and try to get like what we did with our contract support cost and get reimbursed?

THOMPSON: Yeah. At the end of the day, there are certain programs that were exempted from the act. None of the Indian programs were, from BIA or IHS. We both took the full hit of the original. I think it was 5.1 percent in 2013. We completely took that. If, in fact, we had to face a sequester in this budget, they would take our \$2.5 billion, if that was the dollar amount that we got, and they will take 7.3 percent off the top of it, and that would be byline item. It is the way they did it last time, so we had no discretion as to how we would distribute that sequester. It was for each individual line item where there was a TPA or a construction project or a water rights payment.

So they just took it straight across the board. Water rights were excluded from it. There were certain judgment payments that they did not sequester. But everything else, whether it was education or welfare assistance, it took an across-the-board sequester number. So that is part of just the awareness of what may be in '15. But, obviously, we have no idea of what that's going to look like over the next 60, 90 days as to how they come out with what the final budget dollar amount is.

This is the roadmap that they put in place three years ago or four years ago. And if nothing changes, that's what would occur. But we're hoping the adults will show up in the room and address this so that we don't have to live through another sequester going forward. Just an awareness that that is out there on the '15, well, for the next 10 years unless something changes, that there is a sequester or a cap amount from the bipartisan for their reducing the overall budget down. Again, the administration and OMB's hands are pretty much tied on this. It's a congressional issue.

CHAIRMAN: I think the main issue on '15 is we're not sure how Congress is going to respond to the current CR. Will they extend it for a short period of time? Or would they do something like what you just described as this CRomnibus - whatever - bill.

THOMPSON: We can talk about '15. We were able to have staff work beyond the call of duty to make sure that everything got staged. When the system opened up the 21<sup>st</sup>, we were able to push all the TPA money out to the various tribal locations in regional, as well as agency locations, so the funding stream was there. Now, it becomes the issue of the work volume of the awarding officials being able to push the documents on out. So from the electronic standpoint, we got it to the further stage we can. Now, it's just a bandwidth of the awarding officials locally, being able to get all 507 contracts out. If that's all we had, one per tribe, but in some cases we've got seven or eight contracts per tribe. This is the 3,000 or 4,000 contracts that have to be issued.

Every time we have a CR, that whole process repeats again. It's not like we can do one shot and we're done for the year. We get to play that exercise multiple times.

CHAIRMAN: Yeah. I think that's what the main issue that tribes are concerned about. It's cash flow, just put it simply, to pay the bills. So that's the main issue, is that there's no hold on it now. I mean, originally, when the fiscal year began, you were shut down for about three weeks, I can't remember.

THOMPSON: Yeah, the first three weeks of the year. This was the last year that we did an FBMS upgrade because we're on the unified system with the rest of the department. They were deploying part of the rest of the program. There was an extra week there for the deployment of that that the system was down.

The other thing that occurs with us that is a little bit different than from the tribes, when you close the fiscal year, you've got an extended period of time to get all of your workbooks or all your books closed and your audit done. In our particular case, our editors are already finished. They came in and basically hijacked everything and said, give us everything you got.

They're completing fieldwork this week, so that's the time that we do the audit and upgrade and update all the balances with Treasury and get the apportionments in. So just because the system is shutdown during that 21 days, we're doing work behind the scenes to stage everything, for when the system does come up, that we got it ready to go.

Go to '16. The '16 is scheduled to be out of the soup pot, if you will, February 2<sup>nd</sup>. That's the normal day for the release of the president's budget. But depending on what happens with '15 there's that chicken and egg issue between the administration and the Hill as it was last year, and that we did not have a '14 budget, so they weren't releasing '15 until after it came out. Assuming that we get a budget on '15 in short order, we should be able to start looking at the '16 budget on February the 2<sup>nd</sup> and move forward with that.

So at this point that's where we're at on '16. We took the work that you provided for us back in June. And we have been working on that for the past five months. We're starting to formulate what the president's justifications will be on a number of programs. We're hoping that there is some consistency in the old schedules that we get, and that we know that by February 2<sup>nd</sup> we have everything completed and then we can start working with you to highlight what is in the president's proposal. But more important, start working with Congress to try to get something past through them for fiscal year '16 so that we're not under CRs, and we got some stability in the funding streams coming to the tribes.

And then on '17, in your handout, there's this graph, if you will. For those of you, and I think pretty much everyone has been here before, one of the documents that we present every time is where we're at in the time table. Obviously, we're getting ready to start the '17 process. And we're asking the regions to consult with the tribes on what the priorities are, what the unmet needs are. We've staged all that information. Hopefully, by this time, we're moving forward with collecting that data and information and budget desires. At the end, we have 12 consistent packages that we'd be able to, if you will, consolidate. But we can present it back to this body for final recommendations as to the priorities that we move forward.

LOUDERMILK: One of the things that we're doing in the Alaska region with the support of our two representatives here is to look at the data-gathering process. We've gone through and we're looking at getting the survey out, and I think, in the Alaska region we had 10 or 12 tribes that were providing input at one point in time and the numbers have gone down since then. So we're trying to gather more tribal input in the budget process.

We've got a Google survey that we're going to start sending out. We're going to have kind of a rollout when we do the provider's conference and provide some information and some training on it. And we're looking at gathering not only the success stories, but looking at how we can prioritize the data, prioritize the needs, and see if there's a way that we'll be able to stratify that information once we start gathering it by the regions throughout the different parts of the state of Alaska and the different tribes.

We're also going to be looking at success stories. And a lot of the information that we'll start gathering now, we'll be looking at rolling up into our March meeting when we do the presentations. We've met with the IT folks. Just last week, I was able to go through and finalize a lot of the final aspects of it. And if I can back up a little bit, we've been working with the Pacific region and Western region. Also, we were hosted by the Northwest region, Mr. Speaks. We brought our regional directors in and a couple of our budget folks to just kind of start planning the layout of how we do this.

S. THOMAS: We have geographic isolation for each tribe, so being able to do this online is pretty much a must. And as we go out to the hubs and to the villages and do a door-to-door in educational thinking, one thing is first identify this at the provider's conference, but do the educational component at the provider's conference. Letting the tribes know that we're coming forth with what we're coming forth with and how it's going to be user-friendly to be able to do it online. That's what Bruce is working with the IT people on.

THOMPSON: Each region is not a one-size-fits-all. Everyone has to work within the resources, the desires of the tribes. But at the end, in order for us to make an absolute case to OMB, the department and Congress we need the granular detail information so that we can push it forward because all the information does get in their hands untethered. We don't edit it out. We compile it up and say, "These are the priorities of the tribe." It speaks volumes when we say that, but, again, it's an individual regional thing even though it's a national budget that we're trying to put together. We're trying to address it as we go across.

ROSEN: We're very lucky with the representatives that we have in the Midwest region, along with my direct reports, my deputies, and my agency superintendents. Because we look at the budget, we work on it all year long. And at our Partners in Action conference in August, we had the draft guidelines for the 2017. So we had a half-a-day session. We had almost 400 people at our conference; 35 of the 36 tribes were represented.

We spent half a day. We had Amber from NCAI come, and she provided the legislative update. We had Dave Conner and Jimmie Mitchell who were there. They gave the update on what we went through last year for the budget formulation. And then Patricia Olby, our Minnesota agency superintendent, she gave the presentation on the difference between what we went through last year with 2016 and what we can expect to see for 2017.

Last year, when we worked on the 2016, we put together six different teams. And we changed the unmet need to unmet obligations, and so we had each one of those six teams working on what those unmet obligations would be. And we came up with, of course, \$711 million, I believe it was, for the different programs. But this year, we're looking at specifically the new guidelines which are initiatives and looking at keeping those same teams in place and working, just having a living team to work through those initiatives for this year.

We will be having a WebEx starting on Monday. That will be one of, I believe, three that we have scheduled. And we include anyone within the region who's very interested in budget. We have anywhere from 20 people to 100 people on the WebEx, and we go through and we talk about the budget formulation process. We feel that the more knowledge that there's out there through this budget process will help us as a region, and it will help our TIBC reps when they come to these meetings. Like I said, we have a great team in the Midwest and everyone contributes.

STAN SPEAKS: We intend to have our meeting with our Affiliated tribes and our tribal reps in the Northwest on November 14<sup>th</sup> and 15<sup>th</sup>, and that will be held in Portland. So we think this year we're going to go for two days rather than one day so we can get a lot more accomplished. We feel like there's a lot of information that we haven't been able to share in the past that we'll be able to this year. So we're looking forward to a good representation and a good budget priority meeting.

AMY DUTSCHKE: We look forward to working with the Alaska region, one, as a mechanism for collecting that information and have been a part of working on that project. Logistics is most of it. So we'll be having regional meetings as we did last year. We had seven regional meetings, again, because of logistics in the state in specific areas.

In December, in the first part of January and then middle to the end of January, we'll have one regional meeting where we'll come together and put the information together that's been collected in those regional meetings in a package to come to the March meeting.

THOMPSON: From a headquarters perspective, what we're doing is supporting it thorough technology. We're posting calendars for all the regions. Each region has a site where they can upload their information that's cross-shared with all the other regions. So it's sort of a work in progress so everyone's got visibility as to what all the other regions are doing. So we're looking for best practices and sharing that on a current state rather than at the end of the season.

We hope to have a better work product for you in March because I think all the regions are putting a lot more effort into the process than what we were doing three or four years ago. So at the end, we hope it will bear fruit as we go forward here.

So here's the timeline of where we're at currently. There's a more detailed schedule in your handout. So we would be looking at, obviously, March, the next meeting to come in and talk about the priorities. And then the final consolidated back in April. There is a short turnaround there between when the subcommittees and everybody works to get that put together. And then, in May, we have that, the final. Here are the recommendations coming from this body as to where we go forward. And then, obviously, we start to work on '18 in August next year. Any questions on where we're at in the '17 formulation?

FIELDS: We recently had a regional meeting. We talked about looking outside the box. We've been putting it into a framework. We've always felt that the Bureau of Education, BIE, has come out really, really low in the priorities. I don't believe that's any intention of the tribes. In developing our own format, we are looking at separating BIE and BIA during the prioritization. I guess we're asking why that couldn't be done.

We segregated out programs under TPA and took a look at those and also underneath BIE. And we could prioritize underneath those two the top three or five priorities, looking at them as separate entities but putting forth our proposals, including both of those. I guess, why are we locked in to doing it the way we've been doing it? Why wouldn't we want to separate those and look at them and prioritize from the Bureau of Indian Affairs perspective and BIE?

THOMPSON: I don't know that there's any process of why we do it the way we do it. I think, in this time, we have to look at collaboration. I know we had a lengthy discussion on the \$19 billion that's in the crosscut. At some point, we have to take those cylinders away and say, here's the need for Indian country, and how do we support education as well.

As most of you will recall, the number one priority this last year was scholarships, one of the education programs. But in the rest of the programs outside of JOM, I think it probably didn't even make the top 20 in part of that. Part of that is if you look directly at the BIE-operated schools, there are only 66 tribes that have ownership interest. All of them have stakeholder interest because their children can go to those schools. But the ones that actually operated, I think it's 66 tribes actually operate schools. And so from that perspective, we sort of get lost in the numbers sometimes as to who is advocating for these. In the write up, I think this past year, even though BIE was not listed as a priority coming out of this body, I think the circumstances around the need to advance education as you've seen from the visit from the president, as well as the documents that Secretary Jewell put forward and established in this study group, and really putting it on the front burner as to what we have to do as stewards in trust responsibility for education to make sure that all of our kids, the 48,000 who attend our schools are getting a world class education, and we're not just warehousing kids out there.

FIELDS: That's what concerns us. It's a daunting task in trying to prioritize from that huge listing. So we took the budget and we'd look at four different aspects. First of all, we looked at the TPA programs basically. Then we took up the central and regional ops and the judgment payments, and we put that into one area. Then we took and we put public safety and justice into one area and then the education.

We prioritized out of those four components. We don't do you any good with the central and regional ops. I don't think any tribe here prioritizes those. But that will give us an opportunity to take a look at those four different distinct sections, and then we picked the top three priorities out of those categories. We have four categories.

Then it is such an overwhelming task for the tribes to take a look at putting TPA programs against education programs or against law enforcement. So why couldn't we take those four and then prioritize the top three out of those four categories and put forth a budget based on the way the bureau is currently organized. We'll probably end up with 12 priorities, but still, we can distinctly say underneath law enforcement, these are the top three priorities underneath that grouping.

THOMPSON: And most of the people that I work with heard my stump speech that if we've got 108 lines in our budget, we can't have 108 priorities.

If it was left up to me, we would have less than 10 lines in our total budget, and that's what we would submit. Congress likes to see the granularity of some of this stuff, but it does make it very difficult on us, as well as the tribes to take those 106 names in. What it allows to happen is people pick and choose. So if I take a couple of million from here, a couple of million from there, it really doesn't affect the program. Where it doesn't send

the message it says education is a priority. We need to fund it. Because anytime that we start backing up and making it real thin across the board, there's the opportunity through the process to say this isn't important. And just a mere exercise that we have to go through in our internal bureaucracies to get to the president's budget is taking that comp table which is the 108 lines or so and make Swiss cheese out of it five times before it ever comes out the other end.

FIELDS: Would you be willing to take a look at a new approach. We've drafted something out. We divided all the programs into those four main categories. I'm asking why couldn't the tribes from those four categories pick their top three. For instance, on the education you'd have a school, ISEP formulas. You've got the JOM. You've got the higher education. All those line items would be allowed to select three.

I think we'd have to buy-in as a TIBC altogether, otherwise, those won't populate to the top when we do our prioritization if we don't do it all in the same format. I think the Eastern region is going to go ahead and do it in that format.

### **Mandatory Spending**

([link to presentation](#), starting on page 6)

THOMPSON: One of the things that I have found in doing the research on this is there are two swim lanes within the budget. One is the Appropriations Committee; the other is the Authorizing Committee. The Authorizing Committee is really the one that controls the mandatory spending issue because it does come off the top. And as we get in it a little deeper, we will talk about Pay-As-You-Go issues around this. But the discretionary is what we are currently funded at.

There are the 12 appropriation bills that go to the various subcommittees on Appropriations. We go make our case, but a lot of the cases made by the overall committee of both the House and Senate that gives a funding cap to each one of those 12 committees, and they have to work within the discretion of that amount. Within ours, we have not only IHS but all of the Department of Interior and EPA. Those are the main programs that are within the funding cap of the subcommittee that we work through.

Mandatory, on the other hand, is really controlled by a specific law. The access that you shall do this and this is the way it will be distributed just about every one of them is either geared to a revenue stream or a specific act.

One of the things that is somewhat interesting is that just about all of the programs within the direct or the mandatory funding, for the most part, are really geared towards the individual eligible population. You get in to the Medicare, Medicaid, the SNAP program, the food and nutrition. It's one of the ones that has some discretionary. But even though it is a mandatory program, what they do with that one in order to balance their budget, they raise and lower the criteria for that program. So even though it's a mandatory funded program, each of the states either have to raise participation or they change the eligibility around to make it balanced, if you will.

As we look at this, I was trying to figure out where, if we just did contract support, how would it fit in to these line items? Or if you would look at it from an Indian program from just the bureau, or if it was an IHS and BIA, then if you keep spinning it back a little bit, how much of the other programs that we talked about across the board would be in that corporate veil, if you will, if you were really putting together a true mandatory budget for Indian programs across the board?

The one outlier in this is part of the law called Pay-As-You-Go. In the Pay-As-You-Go, it really defines where - and I have a beautiful slide on Pay-As-You-Go here somewhere - everything becomes budget neutral with Pay-As-You-Go. So anytime the Appropriations Committee establishes - and that's what would occur in our particular case - the Appropriation Committee would back up and say, "we're going to make mandatory

funding for either a segment of our business or all of our business.” Then they would have to find a specific offset within the budget that established what was going to be the benchmark going forward as I understand it.

Back up to these slides. Here is a sort of a major overview of those programs that are mandatory. The ones that we really understand the social security, Medicare, Medicaid, federal employee retirement, veterans’ pensions, and the SNAP program.

CHAIRMAN: Tommy, this is a good snapshot of the kinds of programs that are mandatory. But every one of these are in the Committee of Jurisdiction, it’s just that in the Committee of Jurisdiction, there’s the items that are discretionary monies, and there’s items that are mandatory. So it’s not like it’s in a separate committee, right? So you break these things down. These aren’t all in one committee. They are in multiple committees, it’s just that some are mandatory. It falls under different rules than the discretionary, correct?

THOMPSON: Correct to the extent that the discretionary is gone from some of the programs because they are tied to a specific revenue source. So it’s not at the discretion of the Appropriations Committee to increase Indian programs this year. It would be whatever the authorizing committee said, that we’re going to tag this revenue stream to support Indian programs.

CHAIRMAN: Okay, I get it. But for example, the 302(b) allocation we talked about, that’s only discretionary money. There’s a different process for the mandatory component of it, and it will vary from activity to activity, as you said. Some coming from within their budget, but it’s mandatory, some coming from some other source, is that correct?

THOMPSON: And most of these are either fees or taxes that are specifically attached to that particular activity. That generates the revenues to pay that particular program. Like social security, good example. And Medicare you’re paying the Medicare.

LOUDERMILK: I think one of the things Tommy was saying though was that for all of these programs, they’re based on a formula for individuals basically. The question is if you put contract support cost or some other portion of Indian funding in the mandatory position, would Congress look at that in terms of, okay, X tribe has so many members, and they would then apply that formula. And it sounds like what they do is they look at those formulas from time to time to change the formulas to decide who is eligible and who is not essentially for the mandatory funding and how that’s distributed.

THOMPSON: There are some miscellaneous programs in there. Jimmy was talking about one of them with Fish and Wildlife earlier this morning: it has an excise tax or some other. By the appropriation, they say specifically what the source of those revenues will be used for.

CHAIRMAN: Like Social Security is a dedicated revenue source for social security.

THOMPSON: Then they balance the budget based on the eligibility criteria. Or in the case of social security, Medicaid and Medicare, those are long-term initiatives that are pretty much set for decades out as to what those are going to be. But like social security, they keep raising the retirement age in order to get the actuarial to make the fund work.

In the case of SNAP program, they raised the eligibility for who is eligible for the food SNAP program to sort of, if you will -- I don’t know what the word is. I just want to use the word tether. But they’re actually tying it to an income stream that may not be covering it. So they either raise the eligibility or lower the eligibility to match that. So there’s a lot of interplay even though their mandatory programs, that as we go forward, we would have to look at what risk we would be at. But also, how would we, if you will, distribute whatever they came up with. Because some of the protocols that we currently use, whether it’s number of roads, the

historical base, the number of students there's a number of protocols within our budget now that we use for the distribution of not only the recurring base but as new funding come along.

Looking at discretionary, that comes out of the general tax dollars that all of us pay every year. It goes into the general fund of the Treasury. Based on the bipartisan Budget Control Act, there's a set dollar amount that's made by Ways and Means to all the 12 subcommittees, which is their 302(b) table. And that's what our subcommittee gets, and that's what we compete with everybody else within our group.

The mandatory would be attached to a specific revenue source, if you took it to the *n*th degree here. From that, based on the other programs within mandatory, would come back with a methodology of what that actually covers. The illustration that Ms. Fields gave where we're collapsing it and saying law enforcement, all the programs within it is X. If you took a mandatory and said, okay, 30 percent of this particular revenue source is going to law enforcement, and then you had the flexibility of drilling it through, that possibility would exist. But it's taking the entire process of what we do now for budget formulation, the ability for the tribes to visit with congressmen about what their priorities are and turning it over to a fixed authorizing committee's view of this is the percentage of some source that we're going to provide for Indian programs. And then, they would come back and possibly drill and say these are the limitations within this that we will look at.

Mass transit, it's \$12 billion there, but there's different components within that that they direct within that \$12 billion. It would be the same way with the Indian programs. If you just took the direct to IHS and Indian Affairs, you would look at approximately \$10 billion mixed here. Then the Appropriations or the Authorizing Committee somewhere would have to identify where's the source for the \$10 billion. You would want to make sure there was some inflation factor on it as we went forward so they wouldn't \$10 billion for the rest of eternity.

So there's a lot of moving pieces to this other than just saying mandatory is good. It is good if you've got all the foundation within it. So there's a lot of different pieces within mandatory that is probably worth exploring. But there's a lot of sweat equity in issues that the tribes, as well as us, should look at to make sure that we're not being nearsighted in this and that that revenue stream would hold fruit for generations down. And I don't know what that would be.

You're always no different than the Appropriations Committee. You're always at the judgment of Congress as to whether they want to change something because this wouldn't be a trust type relationship if they attach it to a revenue stream. It should be, but it wouldn't necessarily. A congressional act could change it. They've done that with the Insular Affairs Office where they've set a revenue stream up and said this particular group gets X million a year, and attached it to a revenue stream. And then, the rest, whatever those dependent states are, said, "We're not getting our fair share." So they said, "Fine, we'll take half of theirs and give it to these." So that risk is always out there.

So part of this is not to say yea or nay. It's just to bring an awareness of what the background of how mandatory versus discretionary works. And if we want to pursue the mandatory side, there's a lot more to it than just saying we want mandatory. We've got to get the assurances of what that revenue stream is. Is it a long-term revenue stream? Because at the end, if we say just offset it against something else, they would go through these programs currently and say where are we going to offset this? And as you look down that list, there are pretty good lobbyist groups for each of one of those particular funds that are probably not going to allow you to reduce those. We're talking \$10 billion if you take BIA and IHS together.

CHAIRMAN: The challenge is that, 1) it requires a legislative authorization for it to be moved into that category; 2) there has to be a clearly defined revenue source. So the question in that issue is, what revenue source would be capped in order to pay for this? If we combine IHS and BIA, we're talking about a billion or so dollars.



THOMPSON: Or if you didn't split the program between direct operations and indirect, you're talking about \$10 billion for the entire program. The only one that came to mind is the Farm Bill. We've all heard that on the news. It's one of those mandatory programs that they fund every five years or define what the benefits are going to be every five years. It took a beating for the past five, and then they reauthorized it at a different level. Obviously, those are some of the potholes that we would like to stay out of as we go through this.

But, again, this is background information for you. Obviously, there's a law out there, 111-397 and the statutes according to it, as to what can get in to the mandatory and the process to do that. It's known as the Pay-As-You-Go, and that was where Congress was fighting with itself to keep everything out of the mandatory and get it in the discretionary so that they did have some oversight to it.

And right now, about 60 percent of the federal budget is under the mandatory level. So this is background information. There are some programs within the mandatory that are subject to the sequester as well. So that doesn't put as a hold (sounds like) harmless to move it to mandatory if there's a sequester coming along, unless the authorizing language exempts it from sequester.

I think we've sent a couple of letters over to that effect. So this is background, and here's some pros and cons. Whether they're true pros and true cons, they're exactly what we're paying for about two minutes a time here.

CHAIRMAN: I appreciate you putting this presentation together to make sure that the tribal leadership is well-informed on how mandatory works when we talk about it in a general sense. Sometimes tribes think "just move it over there." And it's not that simple. It's not that easy of a lift.

CARROL: Just a clarification request. I understand the intent is just to share some deeper inside knowledge about the complexity tied with the suggestion of moving from discretionary to mandatory, so I get that and I appreciate that. But you can have that same sort of thing about any discussion that we have about Indian country advocacy.

The point is that this notion of discretionary decision-making as it relates to fulfillment of that fiduciary obligation is a problem. So the suggestion is put it forward not without recognition that it's much more complex and just move it over to the mandatory side of the equation. We appreciate that the federal budget process is much more complex than that. But at the root of it is how do we achieve it despite those great odds to achieve that? Because the other way you can ask this as a congressional environment of not looking to add to entitlements and all that sort of thing.

But conversely, we're still dealing with the same issue. We're going to be providing testimony again next spring, making the same points, the same appropriators having that same sort of conversation over and over again. So we're just hopeful that the administration can appreciate the broader goal knowing that it's going to take some time, if ever, to arrive at that point of doing something differently.

You guys weren't in the room early but one of the summaries that was provided is last week at NCAI, they had a breakout session that Chairman Allen and myself and some others participated on about not only trust modernization, but the budgetary component of trust modernization. And with a resounding agreement on that room, everybody knows that there's a problem with the current budget process. So how do we get beyond that to a different model that seems like it's working more in our favor?

Again, I appreciate the overview because I understand that there's complexities to this and it's not as simple as why is the administration not just moving it over to mandatory? In the same manner, I don't want to paint a picture where it seems like it's no doable. Our challenge is how we figure out a way to make that happen.

THOMPSON: I think just from a technical standpoint, we can make it happen. That's the internal workings of how do we put it together, how do we develop models, how do we go out to the tribes and have the consultation or the negotiated rulemaking that says, here's the process that we're going to follow.

Then the heavier lift is having a unified front of the 566 tribes saying this is what we want to do because it does become political at some point getting Congress to buy off on the end results of what this total exercise comes to. But we can do that. And it's not to say that we don't want to do that, it's just does the tribes and this body have the will to put in all the necessary sweat equity to change the process? Because I hate the budget process probably more than anybody in this room.

At the end of the day, we're working on budgets three years from now. That gives the tribes virtually no flexibility to address the current issues, nor the funding level that is necessary to address those issues. And we're having to compete against basically the same programs in the same budget. And as long as there are caps there within the discretionary, we're always going to be at that whim because it doesn't work from a broader stance, if you will.

The one thing that I think we have to address in this though is what is that model going to look like if we do go to mandatory? What strings or attachments might Congress add to that that may not be in the best interest of tribes having the same flexibilities that they currently have? And so that's part of the political lift that would have to be addressed going forward.

CARROL: It's interesting how plenary authority is interpreted and applied. So in most instances, it's used in a way to limit sovereign authority. Well, here's an opportunity for that even a plenary authority to be used in a way for the government to fulfill what they're supposed to be doing by finding a way to fund in a way that's nondiscretionary. There's an obligation on tribes to have a robust and unified approach to moving this type of heavy lift. At the same time, there is an equal responsibility on the Administration and then Congress to figure out a way to fund the way that it's supposed to be funding.

One of the things that we've been talking about more often here, at least in the tax arena, we were talking about budgetary offsets. So the \$19 billion figure aside for a moment. The previous number that we were using, that \$8.5 billion, \$9 billion figure, coincidentally, equates to the federal tax revenue paid in by Indian country. If we're going to do that let us make that mandatory. We're basically paying that fiduciary responsibility ourselves. At the end of the day, it's what we're doing.

I understand that the whole point of federal budgetary offsets is to be able to accomplish that. But if we only operate and lift this in the confines of the environment that exist right now, we're going to have lots of challenges because there's lots of limitations built in to it that don't favor our interest.

So we have to account for those limitations and those boundaries but also find a way to work around those. Because we say all the time but we never use it effectively the way that we should be. We are special and unique, so the normal rules of the game shouldn't apply to a special and unique situation. It should be a different way to engage if it's special and unique. But we play by the same rules of the game, and then we have the same outcomes as everybody else.

I'm just sharing and putting thoughts out there on behalf of the USET who has been having extensive conversations on this as part of its trust modernization platform, includes this budget component to it. And that the absolute recognition by our tribal leaders within our region, and across the country for that matter, that something fundamentally different has to happen, whereas it's just this hamster wheel that we're constantly on in this budgetary process.

THOMPSON: One comment I would make is if you look at the budget process that we currently employ, it has not been modernized since self-determination was put in place. We're using the same processes that were

put in place in the '50s and '60s when we had all the agencies and we were all direct operations. Nothing has really changed from a budgetary standpoint. And from that perspective, it makes it very frustrating from our standpoint as to what are direct services versus tribal support, if you will, from a contract and compacting standpoint because you hit it. The landscape has changed, but the budget process has not changed in half a century.

### **Report from BIA Director/RDs Meeting**

MR. MIKE BLACK: We did have a meeting with all of the regional directors yesterday, and we went over a myriad of topics. We covered everything from our HR issues that we're having in hiring and security clearances and other things, to contract support, and kind of complimenting the efforts Tommy has going with the funding streamlining project. But, also, we talked amongst ourselves of how we can also make some additional changes within the way we operate our programs and getting money out to the tribes through our 638 and self-determination and compacting.

And to that end one of the things that we're facing right now, probably similar to a lot of the tribes, is our resources. It's not just the money. It's the staff resources that are really getting thin on us right now. We've had a lot of retirements. We had a lot of buy-outs and stuff due to sequestration and other things the past couple of years. But some of our programs and our awarding officials is one of those areas that's really gotten hit hard here over the last two or three years.

We're having a lot of conversations how we can address short-staffing. How can we look at our awarding official certification process that in some cases takes us three to five years to get somebody qualified to be an awarding official. How can we revamp that process so that we can start to bring people into the system, get them trained up to be full-pledged awarding officials to better serve the tribes in those respective regions?

Bruce filled us in on the process that he's working toward up there in Alaska. And I appreciate the efforts of Bruce and the others that are assisting in that process because if you think about the complexities and the issues that he's dealing up there with Alaska and trying to ensure that everybody has the opportunity to be engaged in this process. Now, if it works there, that may be something that we'll be able to utilize to augment the processes and some very good processes such as Midwest and others are already using. But this may be another tool that we'd be able to use to augment those processes.

Communication, I gave them a few minutes at the end there to kind of critique our office and some of the things that they're facing out there that we're not necessarily - I don't want to say - addressing, as well as we could be. Communication, I think we've been hearing that a lot lately. And that's not just communication internally amongst us but communication out to the tribes that we're working with on our respective regions.

Realty, that's another program where we've been severely hit over the last few years, in getting realty staff. So we're starting to kick around different ideas of how -- there again, workforce development.

Training is another area that we've had some discussions on here recently. We just got done running through a pilot of a superintendent boot camp that we've developed. Last week, we had a number of the RDs, superintendents from all around the country come in and go through the curriculum that we developed, critique it, make some changes to it. About 41 percent of our superintendents are new within the last five years. Making sure that they understand everything that they need to know all the way from the red tape and the legal issues that they have to deal with, to the different constitutions, how you deal with tribal governments--from start to finish.

We're doing a number of other things in certain areas. We have a cooperative agreement with the Salish Kootenai College in Flathead, Montana. It's really geared toward our forestry folks. We have 20 students in that program right now. They're training and providing forestry and natural resource types of degrees to

these young students that, hopefully, they can come in to our system or go back and work for their tribes. So that's not just an effort that's geared toward BIA, but it is an effort to help meet the needs of Indian country as a whole. We've also got some water programs that we're working through with the University of Arizona, I believe it is, to help train some of our water operators. So there are a number of students that are in those. So I think over the next few years, hopefully, we'll be able to start expanding some of those programs as well.

CHAIRMAN: Well, one of the things that did come up in our self-governance forum was related to the superintendent boot camp. Another way to put it is orientation in terms of their role and responsibilities, to engage somebody who is knowledgeable about self-governance. Often, the self-governance issue or the agenda can be of concern or threatening to them in many ways as tribes move down that road. I think that they need to be more aware of what the self-governance agenda is all about, what the tribes are trying to do but using that particular vehicle to advance their governmental affairs.

BLACK: We're proposing probably three to four classes this upcoming year. And I think that's a great idea, Ron. Amy was there last week as part of the critique. We do have portions of that in there and then also for 638.

S. THOMAS: The land into trust issue in Alaska that the public comment period has ended a couple of months back, I was wondering when the secretary is going to exercise his authority to put land in the trust in Alaska.

MR. LARRY ROBERTS: The public comment period is closed. OMB has designated the rule as significant. So once we make a decision on how we're moving forward, we have to provide that to OMB. And it'll be public once it goes over to OMB. And so once OMB reviews it, then it will be released to the public. Once OMB declares a rule significant, they can move it out very quickly. We've seen that. We've also seen where it takes sometime before it's released. But it will be public once we send it over to OMB for their review.

S. THOMAS: Within section 5 of the act already gives the secretary authority to put land in the trust. So I guess I'm not really sure where you're taking public comments on because the secretary does have the authority already to do it.

ROBERTS: It's changing our regulation which has an exclusion right now in it for Alaska. And we proposed to take that exclusion out. So that's where we're taking public comment on. We had good comments on that, good participation. So it's just now going through, reviewing those comments, addressing them and moving it forward. So it's priority.

### **OST Update**

MR. JIM JAMES: I wanted to do this in kind of two parts. Mark Davis is the Deputy Special Trustee for Business Management for OST. And a lot of this is based upon the followup that we had from our meeting in Billings when Vince Logan appeared with me. Unfortunately, he's traveling today. He's going to try to stop by tomorrow. I asked Mark to cover the budget stuff, and then I wanted to talk about some of the items that Sam had mentioned while we were there.

MR. MARK DAVIS: Thank you. Okay. So let's see if I can master this thing. So as a followup to the last meeting that you had, and I was not at that meeting, but I'm presenting the information. I was told you would like a budget update to talk about the OST organization and some other information. And then, probate reform, and Jim will talk about this stuff about probate reform. So I have the first couple of slides, and these slides are in your packet that you received when you came to the conference.

So certainly, the current budget update status, we're operating under a CR that's good through the 11<sup>th</sup> of December. So far, no one has mentioned the word sequestration because, remember, there was an agreement last year for '14 and '15, so those thresholds have been pretty much agreed upon. So at this point

in time, no one is talking sequestration. But right now, all agencies are funded through the 11<sup>th</sup>. So we only get funding for the number of days, from October 1<sup>st</sup> to December 11<sup>th</sup>. And within there, there's an across-the-board reduction of the amount that's on the table, shown up on the slide.

The other thing that you asked for was something about our budget, and this is a little bit more detailed. And what I'd like to do is walk through the categories with you. The president's budget request is \$139 million for OST.

Our Congressional funding table has only two lines in it, the executive direction, which is the first one which manages the funds of the Special Trustee's Office and the Principal Deputy's Office. And then, underneath that you have program, operations, and support. And those are the two key budget lines that we have. And within that, it's broken into program operations. Those are the individuals that are doing the work on the ground. That's Jim James's shop with field operations. It's appraisal services doing appraisals. It's trust services, which is our backroom accounting. And then, historical trust accounting which is the historical accounting that that office has been doing.

We also passed through to OHA, the Office of Hearings and Appeals, \$8.2 million.

We have business management, and then we have program management underneath that. There are three components to that. One is trust records, and that is we're responsible for establishing the policies and procedures for trust records for both BIA and OST. They have trust review and audit. That is our audit review.

And then there's risk management, we use an automated software tool called RM-Plus which allows us to put things into a system. And then, each year we compare. We look at the pressure points within certain processes to determine and assess the risk involved at each step of the process for all our operations.

So that is our budget in a whole. It's been relatively flat over the last few years. In some years, we've gotten the increase, from '13 to '14 reflects fixed cost. There's a slight decrease going into 2015.

The next slide is our organization. You had asked to see what the organization looks like.

JAMES: We've been doing research to find out where Native America stands with respect to financial education, banking, access to financial institutions and so on. And as everybody here probably is aware, we don't rank very well.

The interesting thing, there's been a couple of studies, only two that we're aware of. One in 2007 that basically said that Native American youth are less prepared to make important financial decisions for most of their lives. There's a more recent study in 2012 that was done by FINRA, which is the Financial Investment Regulatory Agency here in D.C., that says despite that and the fact that we're very low in terms of our financial education preparedness, we have 104 Native American youth that have been offered financial education. So there's a number of different ways that it's happened. It's happened through, I think, some of the efforts that we've been engaged in in the field. But it's also been offered by some other things that the tribes have been engaged in.

And I know, some of you are aware of it, have your own programs. I know Quinault has a tremendous program to create individual development accounts for native youth where the tribe basically provides one to seven exchanges. For every dollar that the kid puts up, they'll contribute an extra five. Those are great programs, and I think those will help us get down the road to be more prepared.

The other thing I wanted to follow up on, and these were some of the questions that I think Sam asked me was, what about Office of Appraisal Services, how much are they setting aside for contributions through self-governance, contracting and compacting for tribal programs? At least, as of last year, there were 34 tribes

participating, and \$1.2 million was set aside for those programs. Because of the continuing resolution, only a percentage is marked, and Tommy identified earlier, has been set aside for that. It's likely to stay pretty much flat, maybe, hopefully, a slight increase.

Another question was about the Land Buyback because we do support the Land Buyback Program. And more specifically, how much has been contributed to the American Indian College Fund, to the scholarship program, and what if any of that has been disbursed? So far, there's been about 45,000 purchase offers made at 11 locations, and there's been about \$192 million that had been distributed into Indian country. This all ties back to the whole concept of financial education through the Cobell Settlement, the Keepseagle Settlement, the various tribal trust settlements. There's a ton of money that is going in to Indian country, mostly to either tribes as a result of the tribal trust litigation. But the tribes in turn have turned that into per capita distribution, so there's a lot of money out there that folks, hopefully, have the adequate financial tools to use.

About 332,000 acres have been converted as a result of the Buyback Program to tribal ownership, so I think that's a good thing. And \$4.5 million has been transferred to the American Indian College Fund for the scholarship program. I don't have confirmation on this, but I don't think - maybe Larry does - that any of those funds have actually been distributed in scholarships. And I think we're looking at maybe the spring of 2015 for that to occur.

In August, the secretary reaffirmed the secretary's trust principles. And along with that, she issued basically a white paper that addressed some of the Trust Administration Commission's recommendations. So both BIA and OST have been looking at what those are and how can we implement those.

So a number of possible solutions are estate planning, will writing, will drafting, lifetime gifting, transfer payment on death designations. That's something that many of us do just a routine business when it comes to like insurance policies and bank accounts. Yet, that's not one of the things that's affordable or that's offered to Indian trust asset holders. We end up going through this long drawn out probate process, whether an estate has \$2 million or \$2 in it. It doesn't get the distributions or the designations of the beneficiaries in a timely manner to the people that deserve it.

So we have to look at some of the possible solutions. These have been identified in that paper that the secretary issued when she made the reaffirmation. We've been working with a number of legal services organizations and law schools already across the country that have been providing will writing and estate planning services throughout Indian country. These are some of the partners that we've come up with. It really is a joint effort. The Bureau of Indian Affairs, through their realty offices and their probate specialists are helping with all of this. We have to get the information to complete the package so that when anybody tries to write a will for somebody, they need to have the most current and complete information. So it is a joint effort.

One of the tools that we currently have available to us are gift deeds. But this is just something that we maybe need to develop a more consistent approach to. Some of the future opportunities, these might take a little bit more work. We can only do this with the support of the tribes and tribal organizations. Because I think this is probably going to take a little bit of tweaking of some statutory language.

Transfers on death or payments on death designations are not available yet. But I think with a slight adjustment or modification to either AIPRA or maybe some of the ownership transfer statutes, we could accomplish that and make it a lot easier and a lot more efficient.

Family managed trust or partnerships are one of the things that are authorized by AIPRA but it has not been kicked into gear. And I think the assistant secretary this morning mentioned with the change and the short time of this administration, we're not sure whether this is one of the priorities. But it's something that exist that at some point we need to take a serious look at.

Small estate processes and affidavits. Many years ago, by regulation, we actually had a summary distribution. That was eliminated, and I think it's time to look at that again. So I think this is another thing that the secretary mentioned and something that we are exploring.

NOT AFRAID, JR.: Understanding that appraisals are very vital at this point, I was looking at the budget and that is a shortfall. Yet, to streamline that process, the appraisal process, does take a little while. Because there is a timeline on the expenditures over the Cobell. I think I do have a solution, which is we contract that service. We have competent folks who have recently passed the appraisal program and testing for certification. One of the problems though that I foresee is experience. But maybe there was a way that if these individuals were to somehow work with other regions or other tribes maybe through an education program that you may offer, I'm not sure, but just throwing that out there and no need for a comment or response.

But, if I can, Chairman, move on to the next question I do have. What are the chances of reviewing again the foundation guidelines as to the congressional acts and so forth that set the criteria of allocating funds?

ROBERTS: As Kevin talked about when he was here, we are being proactive on the budget for Indian country across the board, and that's one of the priorities that the secretary has had in terms of trying to pull together. And it's surprising to us that it's actually the first time that it's happened where OMB has pulled together all of the different agencies across the federal government basically to take a look at those programs for Indian Country.

So whether it's looking at how do we do mandatory funding which I think is something that tribal leaders are talking more and more about, and I think one of the things that we're trying to learn about at Indian Affairs on mandatory funding is does mandatory mean mandatory? It may mean mandatory for a period of years, but does it provide the stability there for Indian country?

But I think the difficult part is, and everybody in this room knows this, we're working under budget caps right now. We'll see what the new Congress has to say about that. We do have to advocate over and over and educate the members of Congress that these tribes surrendered millions of acres of land. These are not handouts. These are treaty obligations. These are trust responsibilities. This is not something that is just a special interest group. And so we have to keep doing that, but we also have to look at over the next couple of years what we can do under our federal budget to make those resources more effective. So that's something that is being convened at very high levels within the administration, but we need to keep doing more.

CHAIRMAN: It was a good session today. We talked through a lot of different topics. I think that helped us move our agenda forward. I think we're good to recess for the day and reconvene tomorrow at 8:30. And I think that we're going to have OMB upfront and talk with them.

### **Second Day, November 6, 2014**

#### **Opening Prayer**

JIMMIE MITCHELL

#### **Election of Second Tribal Co-Chair**

Sam Thomas was nominated by Jimmie Mitchell, seconded by Rick Harrison, to serve as the second tribal co-chair. Motion carried.

#### **Contract Support Update**

[\(Link to presentation\)](#)

Jim Mackay and Hankie Ortiz

Mackay: A contract is made up of your direct program funds; your startup funds, if you're just starting up the program; your indirect; and, your direct. The BIA has been paying indirect primarily as a percentage over a number of years. But just after the Ramah case, they've started paying direct contract support cost. But all those make up your compact or contract. Direct contract support cost. They pay for administrative activities that are not contained in either your indirect cost pool or direct program funds. They're more like direct program dollars than indirect. They serve only one program or cost objective, for example, facilities, unemployment, and worker's comp.

Your indirect contract support costs are incurred for common or joint purposes benefiting more than one cost objective not assignable to one cost or to the cost objective specifically benefitting without effort disproportionate to the results achieved. They're generally negotiated with the Interior Business Center. Examples are accounting, purchasing and HR. Because as an example, your fiscal department that's doing things, if you break out that they spent this much time in BIA for aid to tribal government, BIA, ICWA, IHS, EPA. It costs them more time to figure that out than putting it in to your indirect pool.

There is fair compensation for past shortfalls. That's Ramah class action, the 23-year old case with two past decisions. June 19, 2012 the Supreme Court upheld full funding for contract support costs. If we remember, that was during the timeframe that the president's budget was trying to put it as a line item, and that has created a lot of contention. Tribes spoke up. And the Senate and Congress heard your voices, so they've said that, we're going to do full contract support cost after this case.

Additional settlement discussions on the Ramah case, class actions are ongoing. They're sampling tribal financial information to estimate settlement amounts.

The workgroup was formed in 2003 as a result of the Ramah settlement. Out of that, we started developing the actual policy. We revised the policy, not just direct contract support cost. We're supposed to meet annually to provide technical advice to the BIA and tribes. One thing that we've asked on this is that we, during your regional budget meetings you include a contract support cost workgroup member in there so we can give an update on what's happening. We can ask questions. Contract support costs are very complicated. Many tribes don't understand contract support cost.

In May 2006, a new policy was adopted. It was based on the IHS for direct contract support cost because there are no negotiations that have happened. We've asked for some pilot projects but none of those have happened to find out if the 15 percent is valid. But that was based on what IHS started out with their direct contract support costs. Now, IHS is negotiating their amount.

The first shortfall report went to Congress for 2009. It was submitted in 2010. Let me go through the three pools real quick. Pool 1 is composed of any funding associated with new and expanded awards, pre-awards, startup, year one contract support cost for a new program. Pool 2 is your prior year of funding, basically, your TPA and everything else. Pool 3 is for any increases. So if there is not enough money in pool 2 to pay 100 percent, they can move money from pool 3 to fill it up as long as they've met all their obligations for startups.

For example, in 2009, the BIA paid 72.6 percent of our contract support cost. And then they got up in 2011 which is the highest point prior to now, 97.46 percent. In 2012 it was 94.86. So that kind of gives a perspective of the percentage of our need that was met.

In 2013, we had sequestration that set us back. And as Tommy Thompson said before, 2013 became our new base. In 2014 and 2015, the appropriation language gave us full funding for two years. No line item. As we discussed yesterday, the Congress said that it's an untenable position.

ORTIZ: I'm just going to summarize today in saying that we conducted eight tribal consultation sessions, three



of them were national sessions, and five of them were held across the country in different regions. We had a lot of participation. We received dozens of comments. So we compiled all the comments and put them together in a little chart that identified what comment was made, who made the comment. And then we had all of those at the last contract support cost workgroup meeting. So all the representatives that were present went through each one of those comments, and we discussed them. Some of them were comments on the same issue, but they were opposing comments. So there were some cuts made by the contract support cost workgroup on what they recommended.

While some people on the workgroup do not understand contract support cost completely, we do have several experts that have been working on contract support cost for many, many, many years. So they were very helpful. You know, we had to do some research during the meeting and pull things up and look back at some historical information. So we really worked together. We have both tribal and federal representatives on the workgroup. We discussed those comments, and the workgroup came up with these recommendations.

So these recommendations were shared with the Indian Affairs leadership and with the Indian Health Service. When we talked with the Indian Health Service, and we've been trying to work out areas where we can make changes to be more consistent, and make changes that would be more beneficial, make the process more streamlined. We talked about statutory changes, regulatory changes, policy changes, process changes. So I'm going to turn it back over to Jim and let him walk you through the recommendations.

MACKAY: One person I'd like to recognize is Vickie Hanvey. She's in the back. Vickie, if you can come up here a little bit. She is one of the instrumental people on the contract support cost workgroup. She's very knowledgeable. She has developed some presentations for the self-governance meetings. So if anybody would like any information, Vickie would be an excellent person to go to.

#### **Long Term Recommendations**

- Full CSC Funding - NO Program Cuts
- Mandatory indefinite appropriation
- No change in ISDEAA
- Simplify IDC Negotiation - Over ½ of Tribes do NOT have current rates
  - Workgroup work with IBC & OMB to determine if:
    - IDC Rates can be deemed approved if no correspondence received from IBC after 90 days
    - Fixed multi-year rates are allowable
- DCSC - change amount allowed from 15% to 18% of salaries
- Timely distribution of Funds
- Budget CSC with all program increases
- Training on policy and Short Fall Report (SFR)
- Overpayments - fair, predictable consistent resolution
  - Adequate notice with appeal rights
  - Options
    - Repay CSC in current year
    - Off-set in the following year

#### **Interior Business Center/Program Support Center (IBC/PSC)**

1. Work through the aging list of Tribes negotiating current Indirect Direct Cost (IDC) Rates (60-70% of Tribes do not have current IDC Rates)

**Recommendation:** IBC to identify problems with timeframe to approve agreements.

- a) Streamline process and reduce IBC administrative burden;
- b) If proposal not approved within 90 days, proposal deemed approved;
- c) Multi-year rates; and

- d) Assigning consistent examiners and the examiners process when negotiating.
2. Identification of Exclusions/Pass-thrus  
**Recommendation:** Correctly identify Exclusions and Pass-thrus in the Contract Support Cost (CSC) base definition (modify standard language to reflect what the Tribe has negotiated in the direct base).
3. IBC representative attend the CSC Workgroup meetings  
**Recommendation:** Assistant Secretary Indian Affairs (ASIA) request IBC representative be a member of CSC Workgroup.
4. Develop a “clearinghouse” for disseminating IDC rates/proposals  
**Recommendation:** IBC to develop website with security controls.
5. Consistency between IBC-Indirect Cost Services (ICS) and PSC-Division of Cost Allocation (DCA)  
**Recommendation:** ICS and DCA to meet to share best practices.

**Bureau of Indian Affairs (BIA)**

1. Timely distribution of funds (contracted and CSC programs)  
**Recommendations:**
  - a) Deadline should be established for all programs;
  - b) Review of distribution/obligation process to reduce backlog;
  - c) Tribes provide required documentation as soon as possible; and
  - d) Disseminate information on any funding increases or decreases as soon as possible.
  - e) Increase percentage of Direct Contract Support Cost (DCSC) to salaries due to increase in fringe benefit costs**Recommendation:** Increase percentage to 18% of program salaries. Current percentage used to calculate DCSC is 15%.

CHAIRMAN ALLEN: If you don't have an indirect cost rate negotiated, then how do they determine what to be distributed to the tribe? So is that an impediment to get the money that's due the tribe?

MACKAY: For continuing resolution, it's based on the previous year's funding. So in this particular case, it's roughly 19 percent.

CHAIRMAN: You mean it's defaulting back to the previous rate?

ORTIZ: Right. Because we haven't gotten an appropriation, we just based it on what you received last year for this continuing resolution distribution. But to answer your question with regard to the rate, the BIA accepts indirect cost rates that are up to four years old, so that shouldn't be an issue anyway. If your indirect cost rate has expired, if it's beyond four years old, then the awarding officials generally will negotiate indirect-like costs. They work with the tribe to determine what would have been considered in their indirect cost rate, and then they do an indirect-cost like calculation that is applied for the indirect cost rate.

MACKAY: For temporary purposes, yes. And that's in the policy.

ORTIZ: It's not actually an indirect cost rate. They're calculating a lump sum amount that's going to be distributed as the indirect cost. It really is time-consuming. That's why we've been trying to encourage tribes to have an indirect cost rate that can be used because they're allowed to have one up to four years old. What was identified here in the percentage, 60 to 70 percent of tribes that do not have current indirect cost rates, in fact, those are tribes that have a rate that's older than one year old. For the BIA purposes, it could still be used if it's two, three, four years old. And there's another group of tribes that have an indirect cost rate that's still useable because it's between two to four years old; it's still useable. And then we're talking about that group of tribes that don't have an indirect cost rate that's current or that's within four years, and so the indirect-like cost are calculated.

There's also another category that we didn't mention and that is the small tribes. We have been applying 30 percent for their indirect cost across the board. And the small tribes are those identified that have in Alaska, \$200,000 or less; in the lower 48, \$160,000 or less, that they've contracted or compacted for. And those tribes, they're not associated with a larger consortium. They are a standalone tribe. In that range, for those small tribes, we've been applying 30 percent. Actually, that's not in the policy.

CHAIRMAN: So you're just been using that as a rule of thumb?

ORTIZ: Right. We've been using that. So we have the 30 percent, and then for other tribes we do the indirect-like cost, calculation for a lump sum. And that's kind of how we had to deal with tribes that don't have an indirect cost rate that we can use. And the workgroup agreed to that. That was something that was developed through the workgroup as a proposed solution to addressing these issues. Because, you know, we want to still continue the contacting and compacting. So if we don't have the indirect cost rate that we need, how can we still pay the tribe their indirect cost? And those were a couple of solutions that we came up with that we've been using, and they're not in the policy. So those are a couple of things we could put in the policy.

MS. VICKIE HANVEY: It is a little complicated. And one thing that I wanted to mention is that there's the two parts: the indirect and then the direct. If we've got 60 percent to 70 percent of the tribes that don't have indirect, we know they're not prepared to negotiate direct. So what we discussed was let's deal with one item at a time. I've been on the workgroup since 2006 when we started. Keep in mind that we agreed back then to use that as a place holder. It's our intent to start working on that at some point. There are tribes that are ready and would be willing to be in the pilot project to see if that 15 percent meets their needs or not. And I think that in the near future we need to start, at least, the pilot project to get those tribes started.

However, like Hankie said, there's a lot of concern with smaller tribes that don't have the capacity to negotiate. They don't have the funds and resources to hire contractors to help them with that. So we need to also work with the agency. Who's going to negotiate that direct contract support cost? On the IHS side, they have the capacity built within IHS. That's not the case with BIA currently.

One thing that I would like to add too is that the agency actually put on the table the 18 percent to actually increase that amount. And I think that that was admirable on their part to at least find some way to try to increase that amount for the tribes. On the IHS side, there is an inflation factor that's automatically calculated. So you hit inflation automatically added to your direct. That's not the case with BIA. So at least, the 18 percent is a way to increase the amount that all tribes would participate in.

### **Bureau of Indian Affairs (BIA) (continued)**

#### 3. CSC Report

Recommendation:

- a) Statement of what the individual is certifying; and
- b) Establish a data cutoff date (September 30).

#### 4. Small and Needy Tribes without IDC rates

**Recommendation:** Provide CSC in the amount of \$65,000 or their total contracted 106 (a)(1) contracted amount, whichever is less.

#### 5. Increased workload Lump Sum negotiations (due to Super Circular/raised audit threshold from \$500,000 to \$750,000)

**Recommendation:** Training of BIA and Tribal staff to include creation of templates, samples and training mentors.

#### 6. Possibility of pilot rates (negotiated fixed reimbursement rate)

**Recommendation:** Have BIA research Indian Health Service (IHS) pilot project to determine if it might be a feasible option.

**Office of Self-Governance (OSG)**

1. OSG-CSC Calculation Form (BIA-CSC calculation Form)  
**Recommendation:** To develop submission form that captures all data elements necessary to complete the CSC calculation and seek OMB approval for future years.
2. Timely distribution of funds  
**Recommendation:**
  - a) Deadline should be established for all programs;
  - b) Review of distribution/obligation process to reduce backlog;
  - c) Tribes provide required documentation as soon as possible;
  - d) Disseminate information on any funding increases or decreases as soon as possible; and
  - e) Hiring of a budget analyst.
3. Increase percentage of DCSC to salaries due to increase in fringe costs  
**Recommendation:** Increase percentage to 18% of program salaries. Current percentage used to calculate DCSC is 15%.

**NOTE: BIA Recommendations:**

1. OSG submit funding distribution list in a timely manner in accordance with the applicable CRs or distributions; and
2. Identify and track multiple IDC Rates per awardees at the OSG level.

**Department of Interior/Indian Health Service (DOI/IHS)**

1. Indian Self-Determination and Education Assistance Act (ISDEAA)  
**Recommendation:** No changes to the Law.
2. CSC funding  
**Recommendation:**
  - a) Work with Congress and OMB to develop legislation to make CSC funding a mandatory indefinite appropriation; and
  - b) X-year CSC appropriation.
3. 100% CSC funding  
**Recommendation:** No program dollars should be used to fund CSC.
4. New program dollars  
**Recommendation:** When the President requests an increase in a given program, the President's Budget should also identify the projected additional CSC requirement that is associated with that increase.
5. Sequestration  
**Recommendation:** Tribes and Federal Government to be restored the amount that was sequestered (both program contracted amounts and CSC).
6. CSC distribution "Overpayment"  
**Recommendation:** BIA/IHS should adopt a fair, predictable and consistent approach for dealing with CSC "overpayments."
  - a) Adequate notice to the Tribes of "overpayments" with appeal rights and identification of possible impacts;
  - b) If Tribe does not repay in the current year, BIA will off-set in the following year in lieu of imposing a Bill for Collection from Treasury which risks all federal funding transactions to the Tribe or Awardee.
  - c) Define "Overpayment" as a distribution of CSC based on the most current IDC rate and most current negotiated DCSC or lump sum negotiated amounts at September 30 each year.
    - The calculation of the "overpayment" is based on the most current available rate at September 30 - this date would be used for every Area/Region to include OSG, no exceptions.

MR. KITCKI CARROL: Is it correct that an overpayment of CSC would result in under expenditure of awarded funds? Is that one of the reasons? Will an overpayment scenario of CSC result because awarded dollars were not expended in the current year? So in the current fiscal year, if you're awarded \$500,000 and then your CSC that goes along with that. Overpayment of that amount that went along with that \$500,000 will result if you didn't fully spend that \$500,000?

MACKAY: No, it would not. It's calculated if you would spend your full amount in your program dollars, so if you have \$100,000 and \$50,000 in contract support cost and they give you \$60,000, you're overpaid by \$10,000.

CARROL: Why would they be awarding you more CSC than what your award amount is?

MACKAY: They may not have the correct information from the tribe as far as what salaries are for negotiating the direct contract support cost. Your indirect cost rate may have gone down.

CARROL: Okay, so then the real question then is overpayment would only result due to an inaccurate estimation of your CSC?

MACKAY: Correct.

#### **Department of Interior/Indian Health Service (DOI/IHS) (continued)**

##### 7. CSC Training

###### **Recommendation:**

- a) DOI-Develop training model with CSC workgroup members and Awarding Officials on CSC policy, implementation on data required for the CSC report;
- b) Currently BIA offers ISDEAA classroom training, webinars, and on-line training;
- c) IHS-Develop CSC training; and
- d) Attach trainings to National Meetings (example: TBIC, NCAI, SG Conference, Providers Conference, Partners in Action, etc.).

##### 8. CSC Policy Consistency

###### **Recommendation:**

- a) IHS honors IDC Rate up to 3-years old and BIA honors IDC Rate up to 4-years old.
- b) BIA and IHS staff to jointly review policy and provide recommendations to CSC workgroups:
  - Please note, the DCSC should be excluded from this consistency analysis as the BIA CSC Workgroup will continue to analyze this, the CSC Policy of both Agencies should follow their respective missions.

BIA and IHS staff to jointly review policy and provide recommendations to the workgroups. DCSC would be excluded from this because the workgroups are working on that. A part of TIBC has just said that the IHS and BIA workgroup meet together to look at the recommendations. That has not happened.

What has happened is that when we finished our recommendations, the assistant secretary met with the federal officials on the award group, the key ones - Hankie, Terry Parks, Sunshine Jordan - to go over our recommendations. They did not feel that a tribal workgroup member needed to be there. It was discussed, but it was decided not to have that person there. And then the assistant secretary and his staff met with Dr. Roubideaux and her staff, and they're working some issues out.

ORTIZ: I think we've discussed our consultation process, and the IHS had a different consultation process. I believe that they went out and spoke at 12 different area offices. But in any case, they consulted with, I think it was four different workgroups, including their contract support cost workgroup, but also including three

other groups. And so they had recommendations from these groups that they brought to the discussion. And we just brought these recommendations, the ones from the contract support cost workgroup. And that was kind of the starting place for the discussion. I think the assistant secretary shared yesterday kind of where the discussions have gone and kind of where we are. I don't think I can summarize it any better than that.

MACKAY: I think the biggest discrepancy between the two is the assistant secretary had our workgroup go by agency and go by priority within the agency for recommendations. I don't believe that's happened in the IHS side of the house. They've got a technical group. They got their workgroup. They've got some other groups. Instead of consolidating them and coming up to a priority of what they felt was the highest priority to the lowest, they just lumped them all together. So it's just mudding situation.

#### **Department of Interior/Indian Health Service (DOI/IHS) (continued)**

- c) Retain the three pool structure. The three pool structure is identified in the CSC Policy Handbook, the pool structure has worked for years where 100% CSC funding was not available:
  - **Pool 1** is Indian Self-Determination Fund for Startup and Pre award Costs.
  - **Pool 2** is IDC and DCSC.
  - **Pool 3** is for Special Congressional Appropriations.
- d) Provisions need to be established for non-current IDC rate adjustments (Contract Dispute Act claims and fixed-carry forward IDC rate adjustments).

#### **Bureau of Indian Education (BIE)**

1. Administrative cost grant

**Recommendation:** Consideration of full funding of the Administrative costs grant

2. Choctaw Decision Schools

Recommendation:

- a) Consistency in applying the exclusions;
- b) Consistency in applying criteria for eligibility; and
- c) All Choctaw Decision Schools be included on the CSC report.

#### **Indian Employment, Training and Related Services Demonstration Act of 1992, Education Assistance, Public Law 102-477**

OSG-CSC Calculation Form (BIA-CSC calculation Form)

**Recommendation:** To develop submission form that captures all data elements necessary to complete the CSC calculation and seek OMB approval for future years.

On 477 tribes, OSG and CSG calculation form to develop a submission form that captures all the data elements necessary to complete the contract support cost calculation and seek OMB approval for future years. And that ties to the key, the difference between the Title I tribes, compact tribes, and self-governance tribes.

Title I tribes submit budgets to the agency. Self-governance tribes do not provide a budget report without budget information. At least, you don't have to get the whole budget but just the pay cost portion. They cannot correctly calculate the direct contract support cost need. So it's really important that that information is provided, a form is developed that everybody agrees to and it's utilized.

HANVEY: Absolutely. And the sooner that you get that in you would think the sooner you would get paid. So there's an incentive there to get that data in. However, one of the recommendations that was mentioned earlier is that within OSG, they do not have a budget officer - I'm not sure if that's the actual title - to actually move the money. So there is an internal issue within the regions. Once they calculate each and every tribe, they can go ahead and individually get those payments out. That's not the case with self-governance tribes, so we've made recommendations to address that.

And we've discussed that with the assistant Secretary to address that particular issue to get those payments out. So in other words, what's been happening, but what's been happening is let's say that several of us are on the ball. We get our calculations done. We get it submitted. It's sitting there waiting, instead of being paid, as soon as that information is in. It's sitting there in a holding pattern.

RICK HARRISON: I have two comments. One is on the long-term recommendations from mandatory indefinite appropriation. This group has always asked to be exempted or held harmless. And as Tommy pointed out yesterday, mandatory funding can still be sequestered, so we need to make sure we say that it's exempted mandatory funding or mandatory funding that would be exempted from sequestration. It's my understanding that you propose a rate based on what you propose your spending is going to be. It doesn't get finalized until well after the fiscal year is over. If you don't spend all that funding, your final rate is going to go down from what your proposed rate was, therefore, you're going to have an overpayment.

MACKAY: There's two different ways that happen with that. Your indirect cost proposal fluctuates based on your audit results which show whether you've overpaid or underpaid. That is different than what we're talking about on contract support cost. It's two different things that we're talking here.

ALVIN NOT AFRAID, JR.: First of all, thank you for the presentation. Obviously, there's a break in communication here. Being that the working group, I think it would be feasible for the working group to work with its membership. As I go through the presentation here, everybody does have a rep. And so back to the training session, I think that if maybe there was some communication between some of the folks here and the working group, that would really bridge that gap.

Also, I'd like to ask if you could give us a short background on both of you here. Only because I think some of the tribes here view you as the bureau.

MACKAY: We're not the bureau. There's nothing wrong with the federal government per se because I spent 23 years in the military.

But, anyway, my name, again, is Jim Mackay. I'm with the Susanville Indian Rancheria. I'm the tribal administrator there. I've been with the tribe since March of 1997. And I've been involved with the contract support cost in the initial discussions of the policy in the development of the policy, so I've been there from the start on that.

HANVEY: I'm also not with the BIA. I have worked for 25 years for Cherokee Nation. I'm a Certified Public Accountant, and I have a Master's Degree in Business Administration. I've been on the CSC workgroup since its inception and when we actually worked on developing the original policy back in 2006.

HANKIE ORTIZ: My name is Hankie Ortiz, and I'm Kiowa, Caddo, and Comanche from Oklahoma. But I am the Deputy Bureau Director for the Office of Indian Services for the BIA.

### **Remarks from OMB**

MELANIE STANSBURY: I'm Melanie Stansbury. I am a program examiner in the Interior branch at OMB. Our primary purpose in being here today is we don't have a formal presentation, but we did want to come and listen and meet all of you and let you know that we're here, and we're engaged, and we're really honored to be able to participate in your process and appreciate all the feedback. So it's mostly just to reintroduce ourselves, let you know who we are, what we look like, that we're here, that we're listening, and that we're engaged.

But I'd just say, in general, the budget, many of you are just as informed as we are. So the FY '15 budget, as you know, we're under a continuing resolution for the entire federal government until the middle of December.

We don't know what the outlook for the budget will be with the change in Congress and the election. But I think folks are still hopeful that we will get a real budget, hopefully, for FY '15 so that we can take on some of the new projects and exciting work that the Bureau of Indian Affairs and other agencies have been trying to push forward in the administration. So we'll continue to be working on the '15 budget. We're also in the process of analyzing and making decisions about the FY '16 budget which you all have spent the last year-and-a-half providing input to.

And I think one of the things that we really wanted to let you all know is that we have taken very seriously all the feedback and comments that you've provided to us through TIBC, through your individual meetings with us, through the feedback that you provide to Interior. And I think what you will see, hopefully, in the outcome when the budget is released in the springtime is that there has been a really coordinated effort across government to try to address some of the issues that you all have raised continually about federal coordination. I think you'll see that we've listened to what you all are asking for. And I think you'll see that there's been a good faith effort to really honor tribal self-determination and sovereignty.

So I think we're on a good track, and I think we're just really happy to be here and be able to listen. I'll turn it over to Anna. And then if you guys have questions.

ANNA NAIMARK: I won't say much more than Melanie has already said; we want to keep it short. But it's great to see you all. Some of you I have met, I met in Montana this summer or in Seattle about a month ago. But it's great to see you all again. I'm the new BIA examiner. My background is in human rights, and that's why I wanted to get into this business, is to try and see if I could do some good in this budgetary federal world, which is sometimes frustrating.

But to sort of reiterate what Melanie has said, we've really, in our process, done the best we can to listen to tribal priorities and to the feedback that we've gotten. And we're here again today. There's only so many questions we can answer about the budget, but we're really here to be all ears and to listen. And we sort of wish we could spend yesterday and today all here, but unfortunately, we couldn't.

STANSBURY: There was some discussion yesterday about a request that had been put out to get additional support for OMB to do tribal coordination and liaison work at OMB. I heard that there was a call put out for folks to look for potential bright, talented people that you might send over on detail to us. We welcome any candidates you can send our way. Please, send us resumes. We need some good talent to help us, so we would really appreciate that.

CHAIRMAN: Yeah, it is an ongoing conversation that the tribes have been engaging with Raina and Jodi as well, regarding what we think is the need for OMB to have a tribal liaison within OMB to collaborate with you. You're the examiners, for the DOI/BIA stuff, and then you got your counterparts, IHS and the others with Ag and HUD and so forth. Then the folks that work with the regulations division of OMB, as you listened to the indirect cost stuff where some forms need to be approved by you in order for us to gather the appropriate kind of information. So that kind of work and the importance of the budgetary and policy process that we need. So that's what we've been advocating.

We actually are actively canvassing Indian country. We think we have some candidates that we can suggest to OMB. We've been talking to Craig as well. I mean, there is that issue, and then going back to an earlier conversation we had about the \$19 billion that is identified for Indian country. Is it really \$19 billion? Who is really accessing it, you know? And what are the challenges for the money that's not in the BIA or the IHS that tribes may or may not be accessing? So is it a real number?



We were looking for somebody who could help you and your colleagues within the system to have a better handle on Indian country's needs, and the president's commitment to Indian country, which is we think is a big deal to us, and we're very appreciative of it. Since your department has such a key role, we just think that we want to try to ratchet it up. You know, the president has made that commitment, with Jodi's appointment itself is a good example.

I guess, I'm kind of curious, when you listen to the contract support component of it and the challenge, you know, the way that the instructions came from Congress. Some of us had been asking the line item for contract support does need to be identified, so it does not encroach on programs that you saw on Jim and Hankie's presentation basically and say we have the problem over at the IHS side. We want them 100 percent, but we do not want it to have a negative impact, something like paying ourselves. You know, it gets taken out of the left pocket and put in the right pocket. That's not a solution to honoring these contractual obligations. Do you guys have any comments about that? Or even the discussion about the improvement of the policy and process so that we can get accurate numbers?

STANSBURY: Just as a general matter, I would say that OMB, the White House in general, have been very engaged with both DOI and HHS and having regular check-ins to get feedback on what's been going on with the consultations and to listen to what are the recommendations that have come from you all and from others who have shared their thoughts. So we're actively engaged in the conversation.

I think what you've already seen in the FY '15 budget, which was rolled out last spring, was the commitment by the administration to pay 100 percent contract support cost in both the budgets of DOI and HHS, and the commitment to work with you all to figure out how to make sure that those cost do not infringe on programmatic cost. So that we're continuing our commitment to both self-determination, as well as to our commitments to provide programs and services.

I think the FY '15 budget already puts our money where our mouth is. And we'll continue to work with you all and listen to you all in your recommendations for how to improve the process and improve policy around this area.

CHAIRMAN: Well, we appreciate that. Let me go back before I leave contract support. We hope you will help us with IBC and orchestrate a meeting in the very near future. That's an important meeting to have to try to figure out, is there a problem in terms of staffing capacity to deal with the deficiency of negotiated contract support or indirect cost rates? So we want to get rid of that logjam and a bottleneck, if you will, and as well as the policy itself, so there's a consistency. Your help in that effort will be deeply appreciated.

STANSBURY: Just also so you all know. OMB has a lot of different branches that do different things. So we're on the budget formulation side. We will take back your comments about circulars and forms to the folks within OMB who work on those issues, which are not us. But we will work with them, and, absolutely, you have our commitment that we'll continue to work with DOI to identify ways to improve DOI's service in this area and consistency in policy.

CHAIRMAN: And another topic that came up yesterday, probably more on our tribal caucus than it did with the bureau yesterday, is you had put in the president's budget for '15 an increase on Indian Child Welfare activities which is a big deal to us and the Tiwahe. Tiwahe Initiative, which is really about our communities and our families and taking care of our families and children. So we hope that you will continue to be supportive of those initiatives. We have lots of high priorities, but taking care of our children, making sure that they're being looked after, particularly those that get caught up in the adoption forums as well, but just strengthening our community fiber, if you will, the health and wellness of our community. And I think that's what Tiwahe is trying to accomplish as a part of our long-term solutions. So we hope you understand that and you continue to support that as we wrestle with the Congress over how to deal with Indian country's needs. Sam has a question.

SAM THOMAS: Our previous discussions with you have been about taking our funding from a discretionary into a mandatory funding scenario. We had opened our discussions yesterday with Assistant Secretary Washburn and Tommy Thompson in regards to that. And I just want to get your guys take on the likelihood of that happening. Or do you feel that the challenges that we would face in front of us and making that happen, are they achievable? So maybe I'll just open up with the discussion for your take on discretionary versus mandatory funding for the bureau programs.

STANSBURY: So I'm going to answer this in a typical OMB form, which is that we have heard loud and clear tribes' interest in shifting programmatic and other funds to mandatory funding. But we can't speak to what the FY '16 budget will look like until it's released in the springtime, or really discuss the capacity to move program funding to different options at this time. So I'll just leave it at that.

DAVE CONNER: We've heard that back in 2014, BIA received \$142-million increase in funding. And tribes pleaded with Assistant Secretary Washburn and others to use some of that \$142 million to restore some of the devastating sequestration cuts. Instead, the BIA and IHS did not do that. Gratefully, they used about half of it for fully funding contract support and some other activities. But the rest went to a multitude of grant programs. Natural resources benefited greatly. I think about \$30 million in increases. And the bureau had, you know, a bit of difficulty trying to get the money out. We've all heard about the increases for climate change, endangered species, Wildlife and Parks, Forestry, youth education initiative. So a lot of grant programs were implemented this year.

There have been in the past many grant type programs that tribes are eligible to apply for through the bureau, for instance, forest development or wetlands and waterfowl management. But we've heard, I guess, recently that there has been talk that for the first time in the history of Indian Affairs, that there may be some move for some of these grant program application processes to be moved to grants.gov.

So I don't know too much more other than I've heard the talk. And I don't know if any of the federal officials -- I heard this might have been discussed yesterday in the directorship meetings with regional directors. I'd like to hear some comment on that. But also, to say with certainty from Red Lake's perspective the work that is involved in going through the grants process for like DOJ grants and other grants, even though they provide critically important help, it's so difficult. It's a day-to-day struggle. We don't have the staff to deal and keep up with it. It's a terrible process at times. And if it's true that the BIA may be moving some of their programs to grants.gov for the first time, we're vehemently opposed to such thing.

CHAIRMAN: I guess my first question here. Larry, you can respond. I'm not sure this is a question to OMB, but, Larry?

LARRY ROBERTS: Generally speaking, for those fundings that are not reoccurring program fundings where they are sort of one-time funds, my understanding is what the Solicitor's Office has told us, is that those do have to go out as grants. That we have been using 638 for some time on some of these as a distribution method, but Solicitor's Office is essentially saying we can't use that process. And so I think there is a move for those one-time funds like, for example, energy development grants for those to be used through the grant.gov website.

CONNER: Thank you. Red Lake absolutely wants to challenge that. And we'd asked for all tribes present and somehow across the country to engage in a discussion that we absolutely oppose that idea.

THOMAS THOMPSON: One of the things that we have been remiss in doing, you know, it's one of the things. If you call something a grant, it's a grant. And we have not increased our vocabulary to match up with the term. So if you look in our green book, we talked about grants. And if you look at the underlying authority that we have within our domain, if you will, grants, contracts, compacts, and cooperative agreements are all under the same statute. So they are really not grants in the name of the word grant.

So part of what we're doing in the '16 - we hope to - is we start writing those documents up that we will wordsmith the word grant out of our green book. Because once you classify something as a grant by transparency, it has to go on grants.gov. So we're looking at ways to mitigate that from the hard line interpretation of grants, because that's what we've been calling it. And we get crossways a lot because we use that term because there's not another word in our vocabulary that says how do we distribute money on an initiative basis, if you will, within tribes other than calling it a grant. So we're looking at how we can wordsmith that to make it to where it's more compatible with the operations that we're running. But that won't occur until '16.

CARROL: We stand in support of what Mr. Conner has just said. I would suggest then before BIA starts moving with this that they get the language clear to avoid any confusion. And I'll use this specific example to what Mr. Conner just raised. We encounter the situation with this BIA climate change dollars where they were being classified as grant dollars. But I'll take a step further with the language that came up from Interior on this. Even though that we've resorted to it now, or at least a part of it, was that IBC would not be paid on those grant dollars. That's the IBC piece, not the DCSC piece, but they were still coming through ISDA contracts.

So our position is pretty clear. That if, one, we oppose dollars coming out of Interior, be it grants in the traditional sense where any limitations are put on them in terms of being able to recover your indirect, we don't believe that that's in line with fulfillment of the federal obligation. But on top of that, if they're coming through ISDA contracts, there should be no limitations.

And I'm a little bit confused about you saying that non-reoccurring dollars cannot come through contracts and compacts to the point of these being just one year monies?

ROBERTS: So it is a point of significant discussion within the Solicitor's Office about how we can move those monies out. So if it is one-time funding, there is a question in the Solicitor's Office about whether we can put those out through the 638 process which we have used in the past. We ran into these hurdles with the energy funds that we're distributing to tribes. And those funds, quite frankly, were put on hold for some time. We couldn't get those out to tribes because we were wrestling with this question. So they are going out as grants right now, those energy funds for capacity development and other things.

I hear you loud and clear. So we need that further discussion about this, I guess, because we need to have the Solicitor's Office involved in this conversation essentially.

CHAIRMAN: I made a comment this was not an OMB question, but maybe it is. So one of the questions to you on this topic is, are you pushing the bureau to administer these services to grants as opposed to our contracts compacts? Is that an OMB initiative at all?

STANSBURY: The way I would answer it is the administration is committed to expanding services in areas where there are administration priorities. So there was sequestration in FY '13 because of Congress's failure to enact a balanced budget, and that did lead to programmatic cuts. When the administration was directed to develop a budget for '14 in the Omnibus Bill, we used the FY '14 president's budget, which has been crafted with feedback and consultation with all the tribes as the basis upon which the operating plan for FY '14 was developed. That was a conscious decision, was to move forward by putting a budget out for FY '14 that reflected the administration's budget as proposed in the '14 president's budget.

As a result of that, because there had been sequestration the previous year and because we were dealing with different funding levels, it did ultimately end up in a budget that shifted the way resources were allocated across BIA's budget, and we're all aware of that. But that was the extenuating circumstance in which we found ourselves.

I would say, going forward, we're conscious of the need to support programs in a way that fully supports self-governance and self-determination while also helping to provide support in areas that are administration priorities such as natural resource management, climate change, social programs.

So it's not that we are pushing a particular funding model. And, in fact, at our last face-to-face, when we met, I think, here last May, one of the questions that we asked you is what are the barriers to you all receiving money and being able to utilize your federal dollars in the most effective way. So what I would answer is the OMB has a strong interest in understanding what are funding barriers and hurdles to you getting dollars and using them in way that is supportive of your communities and advancing what you want to do in your communities.

So we're all ears for suggestions. We're not pushing a particular agenda. We're just trying to understand what's the best way to get dollars into your communities in a way that supports what you want to accomplish.

TINO BATT: For Tommy and Larry, I recommend that you guys, you say, in FY '16 you're going to propose and kind of change some of that language to determine the language of the word grant. Can you send that out to TIBC members sooner, before our next meeting, so we can visually see what is considered a grant or what is considered one-time or what is considered direct? Because I think that's very helpful, and I think that's what the main objective for many tribal leaders, whether through TIBC or through HHS and STAC is that we don't agree with the word grant because it's not a federal obligation like Kitcki says.

The other recommendation that we kind of disagree with is having our dollars, and this could be to you Melanie, is our dollar is going through states. We'd rather have them direct, straight to the tribe's grant rather than pass through. And grants just make it more difficult and having to deal with states is bad enough. So that would be a recommendation, but the sooner we get this information, the sooner it would be worked out for everyone. Again, we need consultation on this as well.

THOMAS THOMPSON: Yeah, we put together our position papers to our definitions of those and tried to get some pre-approval from the solicitor's as to what they would accept. You know, as we develop our plan for the president's budget, obviously, we have a number of people that have a say in what the final work product is. We will try to get some document together to where we've got an overriding principle because we're not using the word grant consistently through the green book because in programming the program as to methodology is different. I'll just leave it at that. There's a number of places that the word grant is not appropriate in our green book but because it's there.

CARROL: We are oftentimes struggling around this table and having conversation as it relates to data. I'm curious from your perspective of how OMB views the data that it's requesting from Indian country to substantiate the dollars that are going to Indian country. And I raised that question not knowing what your knowledge base is or is not. You know, one of the other discussions is a principle to the conversations that we have around this table is the relationship that we have with the United States is special, unique, and it's different, and it needs to be treated different. But oftentimes, we feel like we're hostage to a process that's no different than anybody else in terms of how OMB is viewing that obligation differently.

I'm curious as to how OMB views data and the need for data to legitimize and justify the funding to Indian country, and what level and what types of data does it really need. Because part of the challenge, at least from our perspective, from my perspective, is that a lot of the data that's being asked for to substantiate is not really the data that it should be looking for. It should be looking for data that is more reflective of the impact on community and what it means on the overall wellbeing of the United States. Almost in the same context and to the same lens as foreign aid spending, you know, what are those investments into those communities and nations doing to the benefit of the United States?

STANSBURY: So this is actually a question after my own heart as a social scientist. Probably, a lot of you remember a few months ago when we were here in May, we actually - with the Department of Commerce and Census and Interior - asked you all a series of questions specifically about data and what kinds of data would be useful for you in promoting economic development and where you go for sources of data.

I would say in general, OMB's general proclivity, the way we think about data and evidence is that there should be a sound evidentiary basis for why policy and budgetary decisions are made. And I think there is an acknowledgement across the board that data about/with/for Indian Country are not always the best: the ways in which they are collected, the ways in which they're made available.

So that is an issue that we are, in particular, interested in working with the department, with the Department of Commerce on and other agencies, and we're actively working on. So I guess in a general sense what I would say, the kinds of data that OMB looks for in terms of budget formulation is support for why a particular programmatic increase would help support a particular outcome that you're trying to achieve. That's the sort of data and evidence that we're looking for.

So if we're going to have an initiative that's going to address, say, child welfare issues or an initiative that's going to address economic development issues, we want to see an analysis of the evidentiary basis for why increasing funding in a particular area will actually promote the outcome that it does. So it's not that we have a particular set of data in mind. It's really using data and evidence to support policymaking in a sound fashion so that we're not blindly just putting money in places where it's not going to have an impact, so impact-based, evidence-based decision-making is the bread and butter of OMB.

CHAIRMAN: And discussing what our options are, expedite getting the resources out to the tribes. Dave.

CONNER: I also wanted to say thank you to Melanie and Anna for participating in these meetings. I think the more you are able to do that, it helps us, but it also helps you understand the issues. I think you'll probably enjoy some of the discussion.

But I do ask to briefly make a couple of concluding remarks on this issue we're talking about. You talked about nonrecurring and one-time funds as being potentially in the mix here. I can tell you that at Red Lake, year in, year out, much more than 50 percent of our funds that we run the tribe with are designated as one-time. With all the funding documents, that's what it is, it's one-time funding. It's not base funding. Most is either in two categories: nonrecurring or other recurring one-time funding.

If we're potentially facing a situation where all the Bureau -- and it's hundreds of millions of dollars. It's not a few million. It's not just the 20 million or 30 million increase we saw in '14 because all of those pots of the increase of 30 million in natural resources was in addition to regular pots that were recurring but still one time anyway. I must say this scares me just about as much as sequestration did, this concept of moving over to grants.gov.

If you're already moving there with the mineral and energy things, as a couple of tribal leaders here stated, I think you have violated Executive Order 13175 because this has a major impact to tribes. And is the solicitor exempt from 13175? If you're moving away, are we now moving half our funds into grants.gov and out of our 638 and Self-Governance? I apologize if I seem melodramatic, but this is scary, scary stuff. Thank you.

STANSBURY: Something that would be really helpful for us as a sort of general policy matter I guess related to this is, as I just said, we're really trying to understand how to best promote coordination across the federal government and all the agencies and how they make their funds available to tribes and to take down hurdles to getting those dollars into your communities. And I think one of the things that's difficult at the national level is, obviously, as you live it every day, the complexity of funding streams that come in through the federal government, how you access those dollars, where they come from, how the contracting, compacting, granting

and all the ways that they come through. We welcome recommendations as a policy matter about how to deal with this.

And I think one of the challenges as well, as we're looking at, say, programmatic increases for particular areas that have been identified as priorities for the tribes and for the administration is how do we have equity in distributing those funds? One of the challenges is do we make those funds available as base funds but then they get spread so thin that each of the 566 tribes only gets a dollar or whatever, versus having a process where there's equity to access a potentially larger chunk of money? So I think that's one of the things that we struggle a little bit with, is how to figure out the right mechanisms by which to provide increased service and program funding to you all in a way that's equitable but also doesn't create undue burdens on you. So please give us your feedback on that. We welcome your feedback on that.

CHAIRMAN: It seems to me that without a doubt, this has stirred up a lot of concerns from the tribal perspective and of course the department's perspective with regard to how do we get this, how do we move this money, and what's the right approach? Larry just got done saying that they are more than willing to engage. Maybe what we should do is assign this topic to our budget subcommittee and those who want to participate in it. Maybe orchestrate a meeting with you, Tommy, and maybe you guys if you could have time. I'm not sure exactly when we can do it. This is something that needs to happen sooner rather than later. And then we could also have a teleconference opportunity as well, so it could be a teleconference or it can be an in-person or combination.

But if we did that soon in the near future, maybe we could orchestrate that to try to talk through our options. Of course, you guys, having your involvement would be very good so you know what's going on. One last thing, I think, to wrap up this session is thinking of Kitcki's comments and talking to Larry about an economist who does economic analysis of the effectiveness of the Bureau's operations and programs, if you will. But one of the things we might want to consider and the department might want to consider is trying to add an analyst. You saw in the contract support the idea of an analyst. It's not just about contract support.

In many of our opinions, it's that when you look at the effectiveness of the programs, whether it's public safety, natural resource, management and stewardship or community impacts or the schools and how effective our school systems are, et cetera, we need to have someone who can translate the effectiveness or the deficiencies, if you will, of these operations to you when we champion budget adjustments. And also communicating with the Congress, whether or not that we're owning up to the commitments that America has made to Indian country. So we might want to give that serious consideration as we continue down the road of moving together in partnership.

NOT AFRAID, JR: When you look at the Interior's budget, when Ms. Jewell sends it over to OMB, the comparables ain't the same, no rate, no charge. So I'd like to just have you keep that in mind that when you are making these decisions for BIA, also consider that BLM, USDA, and those other programs, sure, they do provide some Indian services, but ultimately, the bureau has an obligation to the Indian folks. So again, I feel we're at a disadvantage because - meaning we, as tribes and BIA - in this team effort, in this finance situation, we're not gaining any headway to it because pollution is taking over, whether it'd be EPA or what have you, meaning monetary is being designated in certain avenues. And I think you as advisors to the president can demonstrate that a lot more clear, being that we just can't give them a call and say, hey, this, that. You're his experts, so if you would pass that on, I sure appreciate that.

STANSBURY: I'll just say as a general response that part of why OMB exists is to really balance the consideration of the budget across the whole of government, so to coordinate across all agencies, to consider the relative priorities of different activities. And so while we sit in the Interior branch and we also work on other aspects of Interior's budget, we are essentially the desk OMB that coordinates with all the other parts of OMB that work on tribal issues and tribal programs.

And what I can say in general is that this administration, this president, as evidenced by his visit to Indian country this summer, has absolutely prioritized Native American affairs. He has absolutely prioritized his commitment to serving Indian country, supporting tribal self-governance and self-determination. And I think that has been reflected in the budgets as we've put forth in the president's budget, which have not been enacted in full. And absolutely, we do consider tribal programs in a different light than we do consider other natural resource programs. So rest assured we're not just weighing tradeoffs with other parts of Interior's budget, but we are coordinating government-wide to consider tribal programs and how they support tribal priorities.

NOT AFRAID, JR.: I also would like to comment that the reason why I asked for that is because a range technician in the BLM avenue with the same pay scale, pay rate, will oversee maybe four or five townships. But within the BIA system at the local agency, that same range conservationist, that range tech at the same pay scale oversees 100 townships. And so there is a big disadvantage where the service is not fully provided. And so if there was an analysis as to the comparable of this department and this department, BIA is getting shortchanged.

STANSBURY: So again, I would go back to the comment that we made a few moments ago about general sort of policy. One of the areas that we're really committed to looking at is where in the federal government is the best place to provide service? We understand that tribes depend on base funds from DOI and from HHS to support their tribal government operations, and we understand that BIA provides direct service through a myriad of programs. But there are also dozens and literally actually hundreds of other programs across the federal government that have subject matter expertise in things like grazing and you name it, whatever it is.

So we're really working hard to coordinate and identify how to make sure the agencies that have subject matter expertise in the areas that are outside of, say, the traditional trust responsibility of BIA are providing better service to tribes, and that we are really supporting the core functions of BIA and supporting that trust responsibilities to Indian country. So we're working on it.

CARROL: I'm appreciative of our partners from OMB being here and sharing with us. I think this is exactly what we've been asking for, for some time now, and to continue this type of dialogue is important. I think though it demonstrates, with some of the responses, that there's some room to go and to grow and evolve in that. I do want to point out the response to my question about data and using language of impact in evidence-base. That's the language that's used in a not-for-profit environment in terms of demonstrating or not whether you can do the work and whether it's a good investment to be able to do that work. And if you can't, then you pull that back.

So some of the language as was being used in the conversation about grants applies to this conversation with OMB as well. Some of these terms that are being thrown around in this conversation with Indian country are not appropriate terms because, again, the obligation is not contingent upon the ability to perform. Sovereignty is the right to fail and to succeed. We all know that. Every government goes through failures and success as it matures and evolves as an organization. So to base funding to Indian country on your ability to have impact in effect is only a small part of the equation.

### **Remarks from Special Trustee**

VINCENT LOGAN: Number one, financial education. What we are going to do internally at OST is we are going to take our huge platform of financial education products and services and we're putting them into a program which we look at as a lifecycle program. While we may speak to Native youth, and I've done that for many years, or Native first-time homebuyers, which we do in the office, or ultimately leading up to estate planning, where we're going with this, of course is what Jim was talking about yesterday, is the probate reform that we find ourselves.

Every day, it's just getting bigger and bigger and more and more expensive. The move to financial education isn't just an intellectual exercise. It's not something that people in my industry are participating in. What we have at OST is we're trying to address a problem. The problem is the estate planning issue and the probate reform that we all - everyone in this room - is well aware of. Now we can't do that alone. Obviously, we don't. It's not a well-funded part of our program, but it is something that's important to me, and I just want to make sure and reiterate to everyone in here that financial education is a cycle for us, and that's how we view it.

And it ultimately leads up to estate planning, and that is just consuming and the problems related to poor estate planning or lack of estate planning and probate reform, it's consuming many, many, many of us, federal officials, and of course, tribal attorneys, tribal offices. It's a shame. I want to address that with every possible tool that I have, and so that's why I've dedicated Brian as our new director, and we're going to work on that. And Jim talked about it yesterday.

The second thing I want to speak to you about is the unbanked and underbanked communities. Now we have seen a large number of liquidity events in Indian country, ranging from the gaming per-caps, all the way to Keepseagle, all the way to Cobell, tribal settlements, the per caps on that side. I was in discussions with the Federal Reserve officials and the statistics about the underbanked and unbanked for this country are alarming. But also in particular, no one has done it; I'm not aware of a study that's been focused on the tribal communities. But I have a feeling that we have a significant portion of our communities are underbanked or unbanked. No checking account, using cashing services with charging fees for such services, lines to cash checks at retail stores.

I can't really stand here and tell you the answer to this situation is to open a checking account somewhere. It's much more complex than that. It involves financial services; it involves your communities; it involves people in government service. Many of you have CDFIs. I'm not sure if they are utilizing the credit union model. I'm not certain. And I can tell you, there probably hasn't been a lot of studies on this. Studies are very expensive and to get good numbers and to get good data on it is very difficult to do. But I am focusing on the underbanked and unbanked in Indian country, specifically because of these liquidity events that have been going on. I'm getting calls from around Indian country about this is what's happening and this is going to continue to happen. And of course now we have the Land Buy-Back Program. Just bear in mind that I consider this to be a priority for me and for my office and for my staff. And I'm glad that the Federal Reserve in Minneapolis has joined in with this and actually they're leading the way. We're working with them, but expect to see more of that fairly soon. We are doing a lot on that and we plan to do more.

The third, the last thing is I need your help. Under the Special Trustee Act, I am to have a board of advisors from Indian country. I believe it's been placed already - I have to check with that - the *Federal Register*. I'm seeking nominations from Indian country for Native Americans and financial and investment professionals for the board. I will be happy to take in nominations. I will look at them, and we'll go forward naming the board soon, but I want to just ask for help from anyone in this room and from your communities, particularly if you know people who are interested in the world of investments, in the world of banking, or in the world of math. That would be very helpful if you have people who have particularly investment backgrounds, licensed professionals. Please contact my office. And I'm sure with the help from Indian country and from your communities, we'll have a topnotch advisory board. I look forward to that.

We're also on a pretty fast schedule with this. I would actually like to see the board seated by March of 2015. That's being very optimistic, but that's what we're hoping for. Please contact my office if you have any names or ideas. I'd very much appreciate it. That's all I have today.



**Tribal Access to Federal Aid in Fish and Wildlife Restoration Acts**

J. MITCHELL: This was brought to our attention that there was an amount of money that was to be granted through Secretary Jewell's direction for about \$1.1 billion in excise revenues to support states in their management of hunting and fishing responsibilities within each of those states. But the tribes sadly have been sort of left out of that distribution. It's well-known that many of the tribes have taken a very proactive role in the management of the nation's resources.

CONNER: The Federal Aid and Fish and Wildlife Restoration Acts were passed decades ago, back in the '30s and '40s. And the intent of those acts was to impose federal excise taxes on the sale of hunting and fishing-related equipment and goods to collect and create a fund to protect and conserve America's wildlife and pretty much everything relating to fishing and hunting – guns, ammunition, fishing lures, fishing equipment, tackle, motorboat fuels. Everyone in America pays a federal excise tax. Director Cruzan, are you packing heat this morning? The government paid a 10 percent excise tax on that weapon and collected it to go into wildlife conservation.

Back in the early days when these laws were created, often tribes were left on the cutting room floor in terms of being carved into access. These laws were amended many times over the years to make sure all of America's land was covered. They accessed the territories, the District of Columbia, everybody except American Indian tribes and their reservations. The amount of funding that comes in every year has been growing and getting large.

Just this year, Secretary Jewell announced \$1.1 billion for fish and wildlife conservation going to the states and the territories. The only territory not covered under these acts and laws is Indian territory; and yet, the states, when they submit their request for their share of this cash cow, they include Indian lands and Indian populations in the tally guaranteed, and the states refused to share this money with the tribes. In Minnesota, we have a letter from the state from years ago saying Minnesota shall never share these funds with an Indian tribe unless compelled to do so by law, and that's virtually the case everywhere in the country.

So now tribes have tried to amend the acts in the past several times. Led by the Senate Indian Affairs Committee, there was an attempt to pass a Native American Fish and Wildlife Act more than ten years ago. There was another big funding bill called the Conservation and Reinvestment Act. Neither of those ever became law. The tribes pushed hard to get tribal access. Generally, all 50 states opposed in the past tribal access to this funding because it would cut into their wallets.

So this is a real example, and I'm guessing one of the biggest examples of taxation without representation. Everyone in Indian country that buys fishing and hunting equipment pays the tax. None of the money comes back for tribal conservation. This year, a number of tribes across the country are in essence reviving this longstanding inequity, especially after we see an announcement like Secretary Jewell of how much money they allocated this year. This is terrible. This has been going on for more than 50 years; tribes being the only ones excluded from access to something that they're paying for.

So we wanted to bring this to the table. Again, a coalition of tribes from various states. We've had essentially two conference calls. The Self-Governance Advisory Council brought this up with Secretary Washburn in January to try and bring him into the loop. So we're kind of trying to generate renewed support, and we even have a draft resolution for consideration.

A draft resolution is before you to support this kind of an amendment to the act change the law. And also, though, we do say we think that the Senate Indian Affairs and House Native American Affairs Committees should hold hearings. I can say that Senator Tester has - being out in Indian country this year - heard from a number of tribes, including Montana tribes about this matter, who had expressed an interest in seeing an Indian Affairs Committee hearing about that. I've been told he positively thought of that concept. So I think

that's a course, support for a change in the law for equitable tribal share but maybe initially worded in this resolution to go to the Indian and House Indian Affairs Committees and ask that they hold a hearing. Thank you.

### **Presentation from the Bureau of Land Management**

PHILIP GLEASON: Thank you and good morning. My name is Philip Gleason. I work at the Department of Interior's Budget Office. With a colleague of mine, we handle the BIA and OST accounts. You probably know about a year-and-a-half ago, two years ago, Pam Haze directed us to start working on bringing representatives from other bureaus in DOI to come and address TIBC to present information that relates to Native Americans in their program areas and in their bureaus and then also just to take feedback and questions from you.

Over those last two years, we've had the fire program come in, the National Park Service, Fish and Wildlife Service all come in, and we're just working our way through. We decided to bring in BLM this time. I'm just quickly introducing Jerry Cordova who is the tribal liaison for BLM.

JERRY CORDOVA: I'm a liaison to the tribal nations for BLM nationwide. As such, I advise tribal BLM leadership on all matters of tribal issues. We have a network of people out in the state offices and field offices that work with your communities, carrying out the tribal consultation and the government to government function. So those of us back here advise these people when they encounter problems that are new or we have people that are just breaking into the system. After working for BIA for 22 years, I have been at BLM for 14 years.

So my approach here is since this is an intro, we haven't had dealings with the budget committee, and not too many tribes are familiar with BLM. BLM would receive \$1.1 billion if everything passes as requested. We're the smallest agency in Interior with regard to funding, although we administer the largest land area, approximately 247 million acres.

I think that we need to work together to try to leverage your support, whatever dollars we can scrounge up to get things done for tribes here and there. There are no funds earmarked for tribes in BLM's budget. We have a few self-determination contracts and we have one self-governance annual funding agreement because the tribes, when they inquire, are told we don't have contract support dollars. So whatever the tribes contract for, it has to be for that budgeted for amount. There is no money over and above what BLM would have used the money for.

We do have expertise within our ranks, which some tribes have used. We have technicians in just about every field of natural resource management, which tribes can use. And in the course of working together in the future, I'm hearing different observations about mechanisms for getting money out to tribes. This is a very sophisticated level of conversation that's taking place compared to 10, 20 years ago, and I commend you as representatives to this body for representing Indian Country in such a professional manner.

We are right now in the process of finalizing our draft tribal consultation manual and handbook, and we had hoped to roll all this out before the President had his meeting next month. Unfortunately, we're not going to be able to do that because right now, we have the documents in the solicitor's office. We're looking at a springtime 2015 rollout of these documents, but the government-to-government relationship goes on and tribal consultation continues.

So we are talking to your tribal leadership out there on matters that affect them in the course of our administering public lands. Since public land management is our main duty, we do not have dollars that are specifically for tribes. If in the event we have work that would affect a tribe territory-wise, if there's fuels management, fuels reduction work that would cut back on the danger of forest fires and we have adjoining reservation and public land boundaries, we can enter into cooperative agreements, MOUs, some form of an

agreement, even a contract to get that work done. We do a lot of cadastral surveys in concert with BLM or BIA. BIA gets the money in the appropriation. We have a cost recovery agreement with BIA. We do the work, and they reimburse us for the amount of work we do.

So there's a lot of work that needs to be done, still yet, especially in Alaska where the land selections under the acts that allow the state and the Native groups to claim lands are still continuing. There are a lot of boundaries that haven't been adequately surveyed down here in the lower 48, and that's where our surveyors are working. There is an interesting development between BLM and AISES engineering and science where BLM will train surveyors, particularly those students who are in the engineering fields, commensurate with their degrees, have that capability of becoming certified federal land surveyors, and scholarships and financial aid will be made available by BLM.

We have ongoing programs in the oil and gas development realm where we -- BLM issues and processes the applications for permits to drill on all federal lands and tribal lands. We also have the duty of inspections, inspecting the drill sites to make sure that the terms of the drilling are complied with by operators. We have the enforcement function also, although we are spread thin in the law enforcement area; 247 million acres is a lot of land to cover, and we do not have the capability of covering every piece of that land. So it's a struggle to live up to those expectations on the part of the tribes and individual Indian allottees to make sure that their rights and their entitlements are looked after.

Many self-determination contracts are in place in this area because we need to train tribal members to carry out that inspection function and then we do the enforcement. So these are just examples of some of the things that are possible between BLM and tribes.

A very important area is also the cultural resource management area. Since there are a lot of ancestral tribal lands, well, obviously, all these lands that we call public lands used to belong to us. It belonged to our people. So this is where our people settled down way back when, lived, and died. The bones of our ancestors are buried on these public lands. We worshipped on these lands; therefore, we have sacred sites all over the place. So we have agreements between tribes and BLM and the Park Service, everybody who deals with antiquities and archeological sites.

There is very little money as you know. Those of you who are familiar with the Tribal Historic Preservation Office's functions, there is a fund that's set up under the auspices of the National Park Service through which the THPOs are funded, but there's a constant amount, and the number of tribes that participate in the process keeps growing exponentially, so the funds are shrinking per tribe. So that's an area where we can work in concert with tribes with your political muscle to approach Congress for increased funding.

So this is the extent of my introduction. I look forward to working with you. I look forward to making my colleagues available to you in your particular regions from our state offices to carry this conversation further. And that's something that the director of BLM has committed himself to at the direction of the secretary and the president. So feel free to call upon us at our field offices, state offices, or here in the Washington office. Any one of us will answer whatever questions you have, inquiries, be it the budget or any of the programs that we administer.

**SAM THOMAS:** How receptive is the BLM in co-management of their lands that abut up next to whether they're tribal lands or ANSCA lands or other lands of ownership?

**CORDOVA:** We have a limited number of agreements in place. And usually, these are lands that, again, abut the reservations that have significance in some cases sacred sites, sacred areas, special significance attached to the lands. So we do enter into agreements. There are some cost-sharing provisions. The one that's been in place is the Kasha-Katuwe Monument by Cochiti Pueblo. That one has been in place now for going on nine years. So a lot of the dry run early on where we were trying out different approaches, trying different funding

mechanisms have now been tried and are in place. So anybody that has a proposal about entering into a similar agreement, we can entertain. We can think about it and see how your situation fits a pattern that we've established.

SAM THOMAS: What do you mean by cost sharing? It's on a percentage?

CORDOVA: It depends on the availability of funds for that particular management purpose, the capability of the tribe. So everything is negotiable.

### **Justice Services**

DARREN CRUZAN: Instead of just having a general overarching discussion about law enforcement, my plan moving forward will be to prepare a presentation on a division within OJS. So the next one I might recommend would focus on tribal courts and how that's funded. And the next one might be with our field operations and how that money is distributed in percentages and how it's all used like that.

SAM THOMAS: Last meeting, we submitted a resolution to divide up some monies up to a certain percentage to go from the Department of Justice over to the bureau, and just maybe if we can highlight that resolution.

CRUZAN: That was a resolution that went over, I think it went over to the Attorney General over in DOJ voicing the concerns. It also touches on the grant process and the frustration and the challenges that come with some of that. I think they would say that we have heard that the grant process is cumbersome for the tribes. And so that was a request that went over them.

I know Tracy Toulou came over and spoke about DOJ functions. But to answer you on where that's at or what decision, there's no decision that had been made on that. But I do know that it went to the Attorney General and to DOJ.

### **FEMA Update**

[\(Link to presentation\)](#)

JESSICA STEWART: Thanks a lot. I am Jessica Stewart. I work in the Recovery Directorate at FEMA Headquarters. I'm the program manager for the development of the Tribal Declarations Pilot Guidance. We've done a fairly concerted effort this year to get out to Indian country and talk to tribes about what FEMA has the authority to do and how we can help tribal communities prepare for, respond to, recover from, and mitigate against disasters. Darren passed around this presentation.

Milo Booth is our National Tribal Affairs advisor. The first slide that says Stafford Act Amendment Tribal Declarations, this gives you an overview of how the Sandy Recovery Improvement Act that was enacted in January of 2013 amended FEMA's authorities, and it gives tribes the option to request emergency and major disaster declarations independently of states. It doesn't require tribes to do that. It just gives tribes the choice to do that.

It instructed FEMA specifically not only do we have an obligation through Executive Order 13175 to consult with tribes, especially on this initiative, but Congress told us specifically to consider the unique conditions that affect the general welfare of Indian tribal governments. And so what we've done in the last year-and-a-half is reached out to tribal communities, tribal governments, tribal organizations, to understand from your perspective: what are those things that we should consider? What are those unique conditions that we should consider as we implement this new authority?

It reflects the right of self-determination for tribal governments. But I think even more specifically in that last bullet that it says it amends all references to state and local to also include tribal governments, it reflects the

sovereignty of tribal nations that the Stafford Act wasn't like that before that amendment. Actually, when they passed the Stafford Act in 1988, Congress included tribal governments in the definition of local governments. So this is a significant step for FEMA and for Congress to recognize tribal governments as sovereign nations in emergency management.

SAM THOMAS: I know in our region, just the local match is 25 percent. For a tribe to come up with 25 percent of a million-dollar disaster, you're breaking the bank in Alaska. Are you going to make the declaration yourself or you're going to wait for somebody else to make the declaration? It could be primary access to the tribal community or whatever. And so I think, lastly in that, lesser percentage would be more viable and more attractive for tribal government to be able to make a declaration.

STEWART: I recognize that the cost share is a significant impediment for many communities, tribal governments specifically. This is a congressionally mandated cost share for all of our programs, 75 percent federal, 25 percent nonfederal. The majority of our programs are reimbursement. Part of what we are consulting with tribal governments about is how we make recommendations to the president to adjust that cost share. Because the only cost share that the president can adjust is this one for public assistance to help repair and rebuild public infrastructure.

SAM THOMAS: I guess my second question back to you would be is the 120-day comment period to this proposed action still open?

STEWART: It just closed on August 31st. We did extend it another 30 days based on input that we got from tribal governments because it was supposed to close at the end of July. It closed on August 31st. We just concluded our consultation on the first draft of the Tribal Declarations Pilot Guidance. We recognize that this is a continuing dialogue with tribal governments to get it right on how FEMA makes recommendations to the president to make disaster assistance available to tribal governments independently as state governments.

We had 60 in-person meetings that we talked extensively about the Tribal Declarations Pilot Guidance, and we received I think it was 1,200 comments from both written and verbal in those 60 in-person meetings. So what we're doing now is adjudicating those comments, and we're going to put out another draft for another round of consultation before we make that document final.

What our programs do pay for is damage to infrastructure, debris removal, emergency protective measures like sandbagging or sheltering or mass feeding and things like that. We also help individuals and households once the president gives us the authority to do that to help repair their homes. If you have impacts that are outside of your infrastructure or impact other things besides individual homes, we'll help you. You come to us and ask for assistance, we'll certainly help you identify other resources that could support those unmet needs.

CONNER: Just a point of clarification. Would an Indian Self-Determination Act fund be considered nonfederal in terms of matching against FEMA assistance?

STEWART: It's my understanding, if you determine how you use your money, we don't care where it comes from. The Self-Governance law says it can be a match. But we'll give you a reimbursement of \$750,000. It's up to you to find that other 25 percent. We don't care where it comes from.

STEWART: How to Request Stafford Act Assistance: after an incident, the majority of events for that impact, either tribal communities or county governments or state governments, the majority of those will be handled by those affected communities, either through their own resources or mutual aid agreements or steady-state assistance through other programs. But if you still have unmet needs to your public infrastructure, to your individuals and households, you take a look at the damage and you may want to seek Stafford Act assistance.

One of the prerequisites of the many in our statute is you have to activate your tribal emergency plan. If you don't have an emergency plan, we can help you develop one. I encourage you to go to [fema.gov/tribal](http://fema.gov/tribal) and it has a lot of information for how you can request technical assistance. You call up our regional office. They will come out and take a look at the Stafford Act eligible damage. Then if you determine that you want to directly request a declaration, then you submit that declaration request. That form and process are also in [fema.gov/tribal](http://fema.gov/tribal).

SAM THOMAS: So a person at the tribal level, if they want these certifications, do you guys have a training center in Fredericksburg where they could go?

STEWART: We do have the Emergency Management Institute in Emmetsburg, but we're trying to get those tribal classes out into the field so you don't have to — especially from your communities. I mean, how many hours does it take to get your folks over to Maryland? So we're trying to do more in-person field level classes to help tribes understand emergency management operations and this process specifically.

NOT AFRAID, JR.: Is the million-dollar threshold a one-time incident or could it be a cumulative of disasters?

STEWART: That's part of the dialogue that we're having with tribal governments, because he's talking about the million-dollar minimum criteria that FEMA uses to evaluate a state declaration request and then we use that to make a recommendation to the President. Right now, we are using our current regulations to process declaration requests from tribal governments, and that does include the million-dollar minimum.

However, part of the Tribal Declarations Pilot Guidance is developing tribal-specific measures that FEMA will use to evaluate a request from tribal governments. We recognize that your capacity is different, that your needs are different, that your infrastructure is different, so we want to continue that dialogue. And I think we heard a lot of concerns about that million-dollar minimum. So hopefully in the next round of consultation, you'll see different criteria and we'll continue to dialogue about what those measures FEMA proposes to use to evaluate a tribal declaration request.

NOT AFRAID, JR.: Thank you. So basically if one incident does not meet the million-dollar mark, then it's a no-go. Because we've exhausted quite a bit and even tapped into our local general fund operation and we ended up having to pull a BIA move and rob Peter to pay Paul.

STEWART: Quite frankly, and this is something that we heard from tribes during the consultation, that FEMA doesn't take into account the ability of any government — the state government, the tribal government — their ability to pay. So we heard that and we will continue that dialogue in the next round of consultation for sure.

CRUZAN: Thanks everyone. Next TIBC, we'll have a presentation on tribal courts defending and where that goes and sort of our next steps with that.

TINO BATT: Shoshone-Bannock Tribes are on this I-15 corridor, and we're having this issue with meth coming up from Mexico, and it's getting more purer as it's coming through. We're not seeing a lot of meth labs. And our chief of police wanted to ask if you guys had any drug funding for -- like drug investigators, as well as maybe for the regions. Maybe is there like a drug taskforce that you guys can provide?

CRUZAN: Yes to all of those. Within our organization, there is a drug division. It includes 30 agents and they're spread all across the country. But our model has been of late to force multiply with the FBI taskforce or DEA taskforce. The big quantities of meth are not being manufactured on reservations. We are running across occasionally a pop bottle operation where it's in the back of a car and it's quick and it's done. It's a small operation, but that and heroin and marijuana are really these drug trafficking organizations from Mexico that are coming up. We are in touch with the DEA.

The other issue that we have a big problem with still is prescriptions. The DEA is very interested in working with us. We do these surges occasionally where we'll come in and make a big footprint and just be as visible as we can and make the arrest and sort of scare people into knowing that this isn't tolerated. But it is a capacity issue.

### **Tribal Data Exchange Update**

[\(Link to presentation\)](#)

CHAIRMAN: As everyone knows the tribal data collection initiative started about three years ago, and this initiative is about trying to gather meaningful data to show performance of how well the tribes are using the federal dollars categorically. Self-Governance Compact didn't require reporting requirements stemming from frustration over what we always thought were some meaningless reports that we were required to use years and years ago. Unfortunately, it didn't tell the tribes you have to provide your audits but they don't provide performance reports. So we knew we needed better data to show that we're using federal dollars in an effective way to make a strong argument for increased monies.

Chickasaw Nation has taken the lead with their very extensive IT department. The primary reason is that tribes sometimes are reluctant to provide us information, thinking that Congress or maybe even the Administration might use it against them such as means testing. So we wanted to protect the integrity of the tribal data information.

We need somebody to represent 638 tribes and we need a representative for a direct service tribe because we want to make sure that this data we're gathering is effective for all tribes.

We also have Configuration Control Board with three people assigned to it. These are all open meetings. These are people who are technical or knowledgeable about the kind of data we're gathering. Steve Dunn represents the actual IT operations at Chickasaw. And so you don't necessarily have to be an IT guru, but you do need to know how we gather data, what is pertinent data that we should be gathering.

ZACH SCRIBNER: I'm the self-governance coordinator for Chickasaw. I'm also the project manager for the Tribal Data Exchange.

STEVE DUNN: I'm the TDE analyst for Chickasaw.

SCRIBNER: I think most of you are familiar with Chris Redman who is our executive officer. Just to add a little bit to your intro and kind of preface our presentation for today, at the last TIBC meeting in Billings there was discussion regarding how this body can capture performance data to help justify program increases, funding increases. Inevitably, along the lines of that discussion, the TDE came into play. And on that topic there were a few requests made by the Council at the Billings TIBC.

One of the requests was to show what the system looks like so you have something that's tangible. Now we were asked to briefly demonstrate how the TDE works. And not only were we asked to speak to TDE's current capacities, but also we were asked to open dialogue on how we can further those capacities and the system can be further utilized.

DUNN: Today I'm going to touch on some aspects of the Tribal Data Exchange system and areas that can help you. TDE is a tribal reporting system that can be reached by the Internet. There is no cost involved, and as long as you have a computer, you can access TDE. What can TDE do for you? If you're doing GPRR reporting, we have 14 measures that address transportation, forestry, irrigation, realty, human services, housing improvement, water, and natural resources. These are what we address now, but more can be added if needed.

I would like to offer TDE as a clearinghouse for your data. You would have the ability to retain your data for years and have electronic history to report your requests as needed. History and electronic reporting are areas often requested by those requiring documentation for various reasons.

There are other items that TDE can do for you such as tribal reporting, but specifically I do not know what you need. What I do know is how to build a reporting system that can work for you. Between Chickasaw, IT, myself and other sources, we can build this system that can support your needs.

One function of TDE is to build TD reports and GPRA data. TDE is also a data management and reporting tool with the ability to manage tribal programs. Regional and agency TDE users can only view data entered for GPRA measures. They have no visibility to tribal measures.

Multi-tribal measures can be shared to produce tribal level reports such as self-governance or budgetary information, or they could be utilized to generate standard reports or reports that tribes routinely sent to DOI or other federal agencies such as The Minimum Data Report, Crime Report, Environmental Reports, et cetera. These reports can be produced and shared within TDE and emailed in a PDF format to the collecting agency.

Tribes can collect, track, and manage any program data and information using TDE. Think of it as things that as a tribe you would like to keep track of. Things like items for community support, law enforcement, environmental programs, or simply identifying and keeping track of individual cemeteries on Indian land, these things are important to a tribe and worth keeping track of.

Tribal measures are made up of data definitions. Think of a data definition as an English description of a task. We want to take that description and apply it to TDE in computer terms. A measure defines the information being managed and the variables used to report the measure.

I want to show you this because TDE can do a lot, but there's a lot of process that goes into defining the information that's being used. If we do that correctly, the result is your benefit from this. TDE can do time series reports. This report gives a trend analysis of the data in TDE. TDE is a working tool, and with any tool there are instructions to learn. Until a tribe is comfortable working with TDE, I will be your instructor. I will help you set up your measures and definitions. System support is part of the TDE system. Right now there are only a handful of tribes that are using it.

CHRIS REDMAN: We're working as a part of the new statement of work with establishing the new budget.

CHAIRMAN: We're basically hoping that TIBC will still be supportive of this. Bottom line is we need some sort of data clearinghouse in order to make a stronger case to both the Congress and the OMB folks.

**Resolution on Federal Aid in Sport Fish Restoration Act** aka the Dingell-Johnson Act, as well as the Federal Aid in Wildlife Restoration

- AJ Not Afraid, JR. made a motion to adopt the resolution. The motion was seconded by Jimmie Mitchell. Kitcki offered an amendment. Motion to adopt resolution as amended carried.

### **Indian Education**

MR. MONTY ROESSEL ([link to presentation](#))

The sovereignty and Indian education grants are done. They've been awarded. Six tribes were awarded: the Gila River, Tohono O'odham, Navajo Nation, Standing Rock, Turtle Mountain, and Oglala. The goal of this is to move away from the way we operate our schools today. The way we operate today is that we tell people what to do from the BIA perspective, and from the tribal perspective, school boards do their own thing. So how do we try to merge in the middle? How do we have tribal and local control?



The focus is on finance systems, HR systems, academic systems, and school governance. Those four areas are the focus of the sovereignty and Indian education grant. After two years, tribes were able to incorporate that funding they get from the school to make this self-sustaining.

We consolidate the resources. For example, we have Navajo Nation with 66 schools. Half of those are tribal grant schools. So what they're doing is they have 35 grant schools. Those are tribally controlled schools. So they have 35 separate HR offices, 35 separate business offices, 35 separate school boards. You can imagine the scale and the amount of money that is being utilized. If they were to consolidate, how much money would they save?

The other issue is our bridge program for the TCUs. We're in the process now of releasing this funding. We have 20 tribal colleges that have been selected to build bridge programs taking kids at the elementary, middle, and high school level and have them begin to think about college.

The BIE language policy: we can't be telling people what to do, but we can facilitate. We're having a Native Language Summit next week with our BIE-funded schools, tribal schools, BIE schools, as well as tribal ed departments to talk about what does this look like in the future. Is your goal and purpose to try to get language in classrooms? How can we help with that?

How would the immersion program work if you have an initiative? Many schools just are not ready to have an immersion program, so you have to dual track. If you're going to have an immersion program, you need to have English-only on one side and an immersion on the other side, and it has to be voluntary. The immersion program really is to allow the funding to fund a dual track, which would be the native language, and it will be entirely in the native language. So you're teaching math in native language. So it's not that you're teaching language, but you're teaching the content using the language.

The funding for BIE would only be for the BIE-funded schools. But there are ANA grants and Department of Ed grants that are available. Our BIE-funded schools also provide about \$24 million a year across all of our 183 schools for language programs, native language programs. And that's one of the things that we're trying to do right now. By consolidating we actually can help them utilize that fund for an outcome of fluency or an outcome of sustainability or an outcome of relevance moving forward.

CHAIRMAN: More clarification because I'm not sure I understand this language immersion initiative. The idea would be that a student, let's say it's K through 6, they go through K through 6 in their native language? All the classes?

ROESSEL: Yes. Usually, what happens with an immersion program is you start K, 1, 2, 3. And then as you get to 4, 5 and 6 you start introducing English a little bit. So you start off 100 percent and then as you get closer to the upper grade levels, you start transitioning in. You end up really at the 7th grade level at a 60-40 percentage usually. With the JOM, Johnson O'Malley, we have another new coordinator. The other thing I really want to focus right now on especially for Alaska is that we're still accepting submissions on the JOM count through December.

MS. VICKI FORREST: My name is Vicki Forest, and I'm a citizen of the Cherokee Nation. As a CPA, my charge is for the business pieces of BIE, to make those as smooth and efficient for the schools as possible. My hope will be that through this reorganization process that principals and teachers can focus on the classroom.

We've established an Acquisitions and Grants Office. We've also detailed the Human Resources Office that work completely on BIE issues but were reporting to the DAS-M. We are going to detail that group to us because, when the American-Indian Study Group went out, the two biggest business issues that were hindering schools were acquisitions and HR.

Currently, we're working with DOI staff, the assistant secretary staff to transition to the full school operations division that's talked in the Secretarial Order. This transition involves working in small groups, again with department officials that are administrative officials, and then the DAS-M officials to work on each business line that's mentioned in the Secretarial Order. So we're talking about education teacher or principal recruitment. We find that the need to really recruit and retain highly qualified teachers is the number one avenue that we have to ensure that our kids are successful.

Education information technology, one of the things that we desperately need to do is to ensure that all BIE-funded schools are ready for the 21st century. With the Secretarial Order, we're going to have a couple of folks that are totally dedicated to ensuring that we have the hardware, software, all of the things that we need in our schools to ensure that our students have the best way possible to learn.

Education communications, that person will start with us soon. One of the things that she will do internally with us at the beginning is to have a large communications plan. You know, there are 183 schools that we have in terms of all of the realignment efforts going on. Plus, while we're doing this, school operations continue.

The last one and a little bit more difficult is education facilities. Right now we have 183 education facilities that we work with. It includes property safety, facilities construction in all of the places that currently are resting with the DAS-M. So that one and information technology I feel like is going to take a little bit more time just because, again, there's a very big interdependence between BIA, BIE, and DAS-M so I don't want to rush in there and say we're going to stop doing this and we're going to do that.

REDMAN: What is the backlog now on all facilities for schools? Do we know?

FORREST: \$1.3 billion is what it is currently. It's a very large undertaking for BIA and BIE, but I'm very devoted to ensuring that safety is a big priority for me for our schools. Also the facility conditions, as we know there's varying levels of that across the country. We're actually having meetings with the DAS-M staff for the Office of Facilities Management and Construction.

CONNER: From a tribe that doesn't have a BIE school but is contemplating and an interest in one, is there a set process that they would undertake? And is it even possible, like say is there no funding for new schools? But if you could speak a little bit about that on behalf of a tribe that was interested.

ROESSEL: I think right now there's a moratorium on schools, school expansion, so it would be difficult. And so the only place you could go for relief in that would be Congress to funding school. We cannot just arbitrarily include a new school.

What are we going to do next? One of the things that we're going to be doing in the real short-term, and we're talking about is to actually go out into the field where we have changes happening in our line offices.

I think that the underlying emphasis in every move we make is how does this improve educational outcomes? I just want to put this up here because I think when we started our Sovereignty and Indian Education grant, there are some battles out there, tribal versus local control. The local school board and the tribal council are working together.

If you take away the tribal versus local, what you're talking about many times is tribal education departments, so you're talking about standards and assessments versus curriculum and instruction. That's kind of the line. One side is telling you what you must learn and what you must test, and the other side will say how did you get there?

REDMAN: I asked the question earlier about the backlog. Do you know if there's any plan to try. I know it's been like that for a long time, and I know it's a funding issue. But is there any hope for these schools that they're going to try to take care of some of those? Is there any discussion about it?

ROESSEL: The blueprint identifies construction as one of the areas that needs to be addressed. There are focuses that we have and one of them is adequate facilities. And so we are trying to, and that's again why the secretary is going to these schools, to highlight the deficiencies that are out there in our school system.

NOT AFRAID, JR.: Thank you, Chair. What are the chances of, say, a tribe building the facility and then BIE overseeing it or taking it over? For Crow, we don't have a high school within a 15-mile radius.

ROESSEL: Not if you don't already have a school. The moratorium is Congress, so we don't have that authority to allow that. But there have been instances in the past where through Congress a new school has been built.

I think it's one of the things that we're looking at, and there's different ways to try to address that. And I think one of the areas that we looked at within BIE which may not be directly impacting there but it's a fallout, if you will, of something, and that is by helping and funding and working with tribal ed departments, it raises the ability to actually to go I'll say toe-to-toe with the state. In other words, this is what we're doing. This is what we want to do. This is what we want to become.

The Department of Ed is focusing also on how they can have that shared sense of responsibility. We're doing the same thing with our Sovereignty grant. So you have people out there - meaning BIE, Department of Interior, as well as the Department of Ed - that are now looking at the model that is in place right now which is not working. It's leaving kids out. It's leaving funding out of the hands of the people who we're supposed to be helping, and how can we try to change that? So I think by trying to help the tribal ed department stand up more, I think it may have or may not have an impact tomorrow. Maybe a few years down the line.

### **Trust Services**

[\(Link to presentation\)](#)

MS. HELEN RIGGS: I wanted to just bring an update on some of the activities that we're doing in Trust Services. I am a Navajo from Arizona. All of my federal career started with BIA, and then working with OST doing Trust.

Land into trust is a huge initiative right now. The secretarial initiative is to get 500,000 acres into trust. We're getting there. Today, since 2009 when we started tracking this, 266,000 acres have come in to Trust. So that's one of our challenges, bringing all that additional land in to Trust. The Land Buy-Back Program going on right now, is taxing our resources as well having to provide support for the important work that they're doing on that.

With all of the different programs that we get involved in, we are short-staffed. To address some of that, we've been working on trying to be creative in how we recruit people. And one of the things that Mike brought up again yesterday was the partnership that we have with the Salish Kootenai College and training some of our students in Forestry. So we have 15 students out there now. Our goal is to get that up to 40 students. So one of the things that we did was get them involved with different programs throughout Forestry.

Once they graduate, the idea is that they would either come to work for us in BIA or with the tribal forestry program. So stuff like that is what we're trying to do. All of the land management side of things we are trying to get our folks out there.

So part of what I wanted to talk about is really all of the resources that are out there that generate money from the Trust. Our budgets are flat or continuing to decline, yet we still have to meet the performance, goals measures and all of that.

So '14, from the minerals royalty, the MRAD, the oil and gas royalties, \$724 million came in the door for that. Fifteen hundred oil and gas leases were approved. In locked box receipts all other types of revenue that come off - that would be your leasing payments from farm, range, forestry leases - all the other types of income that comes in locked box receipts is \$611 million. And then the direct pay is that money that goes directly to the individuals - so direct pay, \$30 million.

The natural resources management, that includes also the division of environmental and agricultural resources' budget is in there. They came back to us in 2014. They were under the assistant secretary's office, and now they're back within Trust Services. So their budget is in that category. Forestry is in there and the Natural Resources. Real Estate service is rolled up with the LTRO, Probate, and Realty Office so their budget combined. Water and power is separate. Safety of dams, the irrigation, all of that is in the water and power, and treaty rights subsistence support.

The program highlights, I just listed all of the programs that we have - eight programs. Natural resource is broken up a little bit more, but here you can see on the bottom the graphic of what the budget looks like.

Technical support, the GIS specialist, the climate scientist, those were implemented. We got those going. Our geospatial center is in Lakewood and they help support the buy-back.

Youth engagement, I've highlighted some of the things that we've done there. The grants, because of a legal issue right now, we haven't got that money out. But we want to be able to do that.

The land use contracts, the real estate services, they are the one that look at all of the leases. They are the ones that process the leases.

The real estate services HEARTH is another big initiative right now, 27 regulations for 24 tribes. And the reason for that is a tribe may have a couple of different types of leases that come in, and so they may have a business lease.

We've also put out information on the website, the link is listed here, of the different processes and so information for the tribes. Hopefully, we will make it easier for tribes to pull that information down. Of course we work closely with the solicitor's office. Our realty branch now goes through those and they have the dialogue with the tribe to make sure that once they get to the point where they are comfortable, then they'll send it forward for review and approval.

ROBERTS: The HEARTH Act covers said that if a tribe submits their leasing regulations for surface leasing - any sort of surface leasing - and they are approved by the department, those individual lease approvals no longer have to come to the department for review. It's the tribes that are essentially in charge of that leasing program. There's no further departmental review needed. 24 tribes have submitted those applications. This is self-governance. This is where we're really trying to get the word out through trainings and other meetings for the tribes to utilize this provision that Congress passed so that the department is not in the business of reviewing tribal leases anymore.

We also streamlined our leasing regulations and promulgated those. And so if a tribe does not have a HEARTH Act, we're still reviewing those leases.

But as part of those leasing regulations, we made it clear that those lands that are leased by tribes and that are approved by the department or the tribes approved pursuant to the HEARTH Act are not subject to state

taxation. And so we've been sued at least in one since on that provision and we prevailed in the district court. I'm sure that there will be further litigation on that, but that has been a real advantage in terms of those leases not being subject to any sort of state or local taxation.

And we are proposing the same approach in our right of way regulations. We have a proposed rule out there for rights of way. We just extended the comment period because Senator Barrasso and Senator Hoeven asked us to extend the comment period. We've received really positive feedback especially at NCAI at the latest session. A lot of the feedback that was from the tribes basically saying, hey, the regs are an A- on these rights of way but here's a few improvements to make them an A+.

On the other side of that coin, we've received a lot of comments from states and industry and public utilities who see that we're now taking the same approach as what we've done in our leasing regulations and are raising concerns about that taxation. So it's important for tribes to weigh-in. If you haven't already, for tribes to submit comments on the right of way regulations because that comment period will be closing soon.

RIGGS: We also developed training. We did three of them this past summer and we are looking at doing some more. Probates, that's another huge issue, another area where land buy-back is impacting them a great deal. We've got 26 vacancies throughout the regions right now. By not filling these vacancies, we're not being able to keep up with all of the new cases that are coming in. At the end of the fiscal year, there were 22,700 cases out there and we've increased since the FY '11 1,500 and 1,500 more going to OHA for adjudication.

Land titles and records, LTROs have a certified record numbers of ownership and titles, and process a lot of the payments that have come through the encumbrances, all of that stuff, the conveyances, all of those things. They processed 61.2 million for the land buy-back program so far. So what this is showing you here is the red line budget again deep cut in that coming down, going flat and yet the number of transactions, the work load (audio glitch) that's going in the opposite direction, and so 10,000 transactions. So, again, the budget dollar is not there to support the workload.

Here's another one on the geospatial support services that we have. Again, the budget is flat and yet the expenses continue to go up. And this is going to be anything that supports the licenses and things like that that continues to go up. As I said, we envision geospatial support being able to support all of the programs that we have and being able to put those layers on top of the land data that we have.

Again, land buy-back is impacting our workload there developing the cadastral-based GPS program to support all of the other programs.

Water and power is another area of concern, the safety of dams. We have irrigation projects out there that have a huge deferred maintenance, \$680 million deferred maintenance, and our budget for that is totally inadequate. There was a Senate hearing on this not too long ago. And so the safety of dams, same thing, there is a lot of repair that needs to happen on those. But there again, we just don't have the funding for a lot of that stuff. But what is out there is successful. The San Carlos Irrigation Project is one that is successful. Again, it's their budget. Are there any questions?

S. THOMAS: I have a question on your 600 million that you're harvested back when the industry was good. I'm just curious on how many FTEs you had when you're harvesting 600 million and how many FTE's you had in 2013.

PAULINE: What we saw in 2004 wasn't even height of the market, 1994 was the height of the market. We'd already started to decline. But our budget remained flat at about \$43 million that we're sending out for timber harvesting initiative and forest products. What we saw in 2008-2009 was the market crash where we saw the international markets change. But between 2004 and 2009, we had already retired probably a hundred foresters. Our data call now from the Indian forest management assessment team, we're down

almost 800 foresters than when we were almost 15 years ago. That's combined with some of the fireside of the house where we do the forestry and fuels and the forest development. And so with the program of getting up 15 now, we can't even touch it.

After a data call to the regional forest managers about a week-and-a-half ago, we see almost every region is down a substantial amount of foresters. For timber sales we're down 60. So if we wanted to go and meet the market demand, which is three times, so we've got about a billion board feet that we could be harvesting right now. International markets have tripled in the last couple of years, and domestic markets have increased. If we wanted to meet that target, we couldn't even get there, not only with the dollars but with the staff.

And just with Dave being out at Yakama, the cutters are right behind him and with that going on so they are even down. They are at 50-65 million board feet. And Yakima is our largest tribe. They should be 150, and that's again staff there. They are down 15, 16 timber sales officers, not even the technicians. So it's pretty substantial and you think of the lost revenue not only to the individual Indians but to the tribes with that of us not being able to meet that target demand.

#### **Old Business, New Business, Review Dates Future of Future TIBC Meetings**

- The first motion on our action tracking was just expressing support for the BIE demonstration projects for language immersion, and that was an expression of support from TBIC.
- The second motion was to convene a TIBC task force to study funding constraints to the BIE, and the task force was to ensure that BIE develops a strong policy statement on any reorg of the BIE and how the trust obligations will be incorporated as part of their mandate.
- The third motion was on the BIA contract support cost group collaborating with the IHS workgroup, and I think we had quite a few updates on that today.
- The fifth was endorsing the concept of Alaska's information gathering. I know that's ongoing.
- The next motion was supporting advance appropriations for both IHS and BIA. You can see we're facing an entirely new Senate and Congress, not entirely, but new dynamics. The previous sponsored bills will have to be reintroduced to the new session of Congress, but I have listed the co-sponsors of the Advance Appropriations Bill just for reference of who's already in support of that concept for the Indian Health Service. The same thing with the motion on improving the mandatory appropriation for contract support cost.

Other new business coming out of this particular session:

- TDE issues that we're going to work on. We have to get all you guys who volunteered for that BIE review.
- CSC mandatory funding.
- And then on CSC, we are going to get the OMB and IBC and a small tribal delegation from I think basically the CSC workgroup.
- The TDE charter and the statement of work.

#### **Closing Prayer**

#### **Adjourned**