

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

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2014 ANNUAL TRIBAL CONSULTATION CONFERENCE

CONTRACT SUPPORT COSTS

May 6, 2014

Held at:  
Crystal City Gateway Marriott  
1700 Jefferson Davis Highway  
Arlington, Virginia 22202

Department of the Interior  
National Park Service  
1849 C Street, N.W.  
Washington, D.C. 20240  
202-208-6843

Reported by: San Hines, Capital Reporting  
Company

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1 A P P E A R A N C E S

2 PANELISTS:

3 W. RON ALLEN - MODERATOR

4 THE HONORABLE CHIEF LYNN MALERBA - MODERATOR

5 DR. YVETTE ROUBIDEAUX

6 HANKY ORTIZ

7 VICKIE HANVEY

8 KEVIN WASHBURN

9 MELANIE FOURKILLER

10 PUBLIC SPEAKERS:

11 JOE GARCIA

12 BRYAN BREWER

13 LINDA AUSTIN

14 C. BRYANT ROGERS

15 PATTY MAXIM

16 "BADGER" ANDY JOSEPH, JR.

17 JEFFERSON KEEL

18 LLOYD MILLER

19 MASON BIG CROW

20 MARK HOOVER

21

22

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3

	C O N T E N T S	
		Page
1		
2		
3	Opening Remarks by Dr. Roubideaux	6
4	Presentation by Mr. Washburn	12
5	Presentation by Ms. Ortiz	16
6	Presentation by Ms. Fourkiller	22
7	Public Comments	29
8	Presentation by Ms. Hanvey	67
9	Closing Remarks by Mr. Washburn	93
10	Closing Remarks by Dr. Roubideaux	95
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

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4

1 (3:42 p.m.)

2 P R O C E E D I N G S

3 MR. ALLEN: There's a sign-in sheet  
4 that's being moved around here, so keep an eye out  
5 for it, and keep it moving so that we can get that  
6 -- I see it down here. So it will make its way to  
7 the back for all those who want to sign in, so we  
8 know you're here as a part of the consultation  
9 session.

10 Now we're going to do this a little  
11 different than we've done this consultation  
12 session in the past. So Lynn and I are going to  
13 be moderating the process. And we want to make  
14 sure that everybody knows that this session is  
15 being recorded, so we've got a recorder here so  
16 that we can document the comments and the  
17 recommendations that the tribal leadership has for  
18 both the Department of Interior and IHS with  
19 respect to contract support.

20 What we're planning on doing is we're  
21 going to have some opening remarks by Dr.  
22 Roubideaux for IHS, and then Kevin on behalf of

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5

1 the Interior will make some opening remarks for  
2 the BIA side. And then we're going to have some  
3 remarks also by Hanky. And I thought we were  
4 going to have Vickie Hanvey -- is she in the room?  
5 Good. Somebody was going to report for the CSC,  
6 what do you call it, the task force? I can't  
7 remember. CSC Task Force. If anybody sees  
8 Vickie, I think she is the one that's going to  
9 also make some opening remarks.

10           And then what we're going to do is once  
11 the opening remarks are presented to the body,  
12 we're going to have those who want to make  
13 comments and recommendations for IHS, we're going  
14 to split the remaining time in half for IHS. So  
15 we'll focus in on IHS contract support issues  
16 which are going to be a little bit different than  
17 the BIA. And then we'll focus in on your comments  
18 and recommendations for the BIA in the second half  
19 of the session this afternoon.

20           So I don't see Vickie in here.

21           Is anybody else here that's a part of  
22 the contract support technical --

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6

1 MS. MALERBA: Melanie is.

2 MR. ALLEN: Oh, Melanie. Where's  
3 Melanie at? So maybe Melanie can provide some  
4 recommendations.

5 Is Vickie here? Okay. Well, maybe you  
6 can do it. Melanie, if you're prepared, you can  
7 ad lib a --

8 All right. So with that, I will invite  
9 up Dr. Roubideaux for some opening remarks.

10 OPENING REMARKS

11 DR. ROUBIDEAUX: Well, good afternoon,  
12 everybody. Thank you so much for being here today  
13 for this consultation session on contract support  
14 costs, the long-term solution. That sounds like a  
15 movie trailer.

16 We are interested today in hearing your  
17 comments about the way moving forward. I think as  
18 over the last two days we've been able to see how  
19 there has been progress that's been great. The  
20 Administration has decided to fully fund contract  
21 support costs for 2014 and '15. I think that the  
22 good news from the IHS sessions is that we've

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7

1 shown progress on the CSC settlements and claims.  
2 And so we've had time to talk about those in the  
3 conference.

4           But really the purpose of this session,  
5 it was requested by Congress to have us develop a  
6 long- term solution to contract support cost  
7 appropriations. And the reason that this came up  
8 was with the Fiscal Year 2014 appropriation for --  
9 it was seen a little more clearly on the Indian  
10 Health Service side, that when Congress passed the  
11 budget, they did not include any kind of  
12 limitation on contract support costs within the  
13 services appropriation for the Indian Health  
14 Service. But they told us to use our increase to  
15 fund three priorities, Contract Health Service or  
16 Purchase and Referred Care, new staffing for the  
17 facilities and full funding for contract support  
18 costs.

19           So we had a number of calls and got  
20 advice from tribes on how to move forward with our  
21 operating plan for 2014. And it turned out that  
22 the \$271 million increase in our services account

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8

1 almost covered all of those priorities but not  
2 quite. And so IHS had to take a \$10 million  
3 reduction in the rest of the budget to be able to  
4 support full funding for those three priorities,  
5 Purchase and Referred Care, staffing and contract  
6 support costs.

7 Congress had anticipated this might  
8 happen in the explanatory language which we have  
9 some handouts that has that. And they basically  
10 said that they wanted both agencies to work on a  
11 more long-term solution for estimating contract  
12 support costs, to make it more predictable so that  
13 they would know what to fund within the  
14 appropriations. And so this really was a request  
15 from the House and Senate Interior appropriations  
16 in the language that our agencies got.

17 And so what's really sad that here's a  
18 situation where we -- the great thing about the  
19 last year or so is that we've all had a chance to  
20 learn more about contract support costs and the  
21 fact that it's complicated but also that at any  
22 one time we're estimating contract support costs,

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9

1 and so when we're planning budgets one or two  
2 years in advance, by the time we get to the actual  
3 appropriation the numbers might be different. And  
4 so that's what Congress wants us to work on is how  
5 do you predict a more -- have a more predictable  
6 contract support cost estimate for budgeting  
7 purposes so that when they do the appropriation  
8 they're more sure about the amount to give.

9           But there's also this issue of how do  
10 you minimize impact of that on the rest of the  
11 budget? And that's what we saw in this Fiscal Year  
12 2014, that without any other limit around,  
13 contract support costs would happen as the rest of  
14 the budget had to be reduced.

15           And so we know that there -- we've had  
16 the first listening session back in March at NCAI.  
17 On the IHS side, we have met with our Tribal Self-  
18 Governance Advisory Committee. We've also met  
19 with our Contract Support Cost Workgroup. And  
20 we've had some really good discussions, and the  
21 discussions have sort of been in two areas.

22           One, and I think you've all seen, and

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10

1 we've talked a little bit about at this  
2 conference, how the tribes are talking about why  
3 CSC should be potentially a mandatory  
4 appropriation because it's not a fixed point in  
5 time. There's an evolving need over time, and so  
6 there's been a lot of talk among tribes about, you  
7 know, one option for the long-term solution could  
8 be to make CSC mandatory.

9           The other option is sort of looking at  
10 if CSC is still a part of our discretionary  
11 appropriations, how do you make that number more  
12 predictable? You know, do we change our policy?  
13 Do we change notification? Do we change the way  
14 we calculate? Are there other ways that you can  
15 change it so that you know that number more  
16 clearly when you're doing budget formulation and  
17 when the time comes for appropriation? And I know  
18 we've talked about things like timelines. We've  
19 talked about things like how it's calculated.

20           And I want to say I'm very grateful to  
21 the Tribal Self-Governance Advisory Committee and  
22 the leadership of Lynn Malerba and Ron Allen.

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11

1 During all this time we've been working on  
2 contract support costs, they have been willing to  
3 sit at the table and have these discussions and  
4 try to figure out a way forward. And I do think  
5 that we've had a chance to start conversations  
6 about more specific solutions, but we still have a  
7 long way to go to hear your ideas about where to  
8 go with regards to that, so when we get our report  
9 from the CSC Workgroup, you might hear more about  
10 that.

11           The good thing about the CSC Workgroup  
12 convening over the last few months is that they  
13 have been working on pre-award estimates, and we  
14 have found areas of agreement where the  
15 calculation of the CSC number is better now based  
16 on an agreement between the tribal members and the  
17 federal members of the workgroup. And we actually  
18 have instituted that when we distributed the 2014  
19 funds as well because everybody wants contract  
20 support costs to be fair and consistent among all  
21 areas and for the funding to get there.

22           So we talked with Congress, and the

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12

1 appropriations committee should get further  
2 clarification. And while they recognize that  
3 tribes are interested in a mandatory proposal for  
4 CSC, they also want to hear more about some more  
5 short-term solutions; what could be done  
6 potentially for Fiscal Year 2015 and our planning  
7 for 2016?

8           So again, we appreciate the input to  
9 date. I think we've had some good education on  
10 this topic. I think we've had some good  
11 discussions. Really looking forward to hearing  
12 your comments today on what you think a long-term  
13 solution might be for contract support costs  
14 appropriations moving forward.

15           Thank you.

16                           (Applause)

17           MR. ALLEN: Okay. Next up is Assistant  
18 Secretary Kevin Washburn. And then he'll  
19 introduce Hanky as a part of the team.

20                           (Applause)

21                           PRESENTATION BY MR. WASHBURN

22           MR. WASHBURN: Ladies and gentlemen, I

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13

1 stand before you at a historic moment in our  
2 history. For the first time in decades, we are  
3 fully funding contract support costs.

4 (Applause)

5 MR. WASHBURN: And I can't take the  
6 credit for that, but there are a lot of people  
7 here in the room that should take the credit for  
8 that, both tribal leaders and lawyers and tribal  
9 administrators who have pushed for that for a long  
10 time. And it's a great victory. This has  
11 remained one of the most significant obstacles to  
12 increasing self-governance now for decades, and  
13 I'm really glad that we have finally overcome that  
14 obstacle, at least for the most part.

15 Winston Churchill once said, "The United  
16 States always does the right thing after it's  
17 exhausted all other options."

18 (Laughter)

19 MR. WASHBURN: And I kind of feel like  
20 that's how we came to this one. But I'm really  
21 glad that we have. We're slow sometimes, but  
22 we're up on the step now, I think. We've got to

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14

1 figure out a way to make sure this is the way it  
2 is going forward.

3           For our programs, probably some of you  
4 heard me say this, but Rube Goldberg could not  
5 have come up with a more complicated way of  
6 getting money from the federal government to  
7 tribes. And we have got to simplify that. We  
8 have got to come up with more efficient ways of  
9 doing this. Part of it is, you know, in BIA and  
10 Interior, we've had some challenges with just  
11 getting just that, getting the money from our  
12 coffers to the tribe's coffers. And we are  
13 working on that. We have made that a priority.

14           But it's also the fact that we've got so  
15 many different programs that all work differently.  
16 We've got, you know, 638 contracts. We've got  
17 self- governance contracts. We've got 477. We've  
18 got 100-297 tribally controlled schools. All  
19 these things work differently, and it's not an  
20 efficient system. It's not a simple system. And  
21 frankly, I think that's a -- the complexity that  
22 we've achieved is a real obstacle to tribes

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15

1 engaging with tribal self- governance. And we've  
2 got to simplify things. And I think we can save  
3 money. I've always said that I would rather have  
4 social workers and police officers and doctors and  
5 nurses than having accountants and auditors. And  
6 so we've got to simplify these things so that the  
7 audit functions are easy, so the accounting  
8 functions are easier and so that we can get the  
9 money out to tribes quicker, so you can do your  
10 jobs.

11 Contract support costs is a big part of  
12 that because you have to have the resources. We  
13 are asking you, when we contract with you, we are  
14 asking you to fulfill the federal trust  
15 responsibility of the United States towards  
16 tribes. And we're saying we're giving you the  
17 contract and responsibility and the resources to  
18 do this, but we haven't been giving you the full  
19 resources. And I'm glad that we are now giving  
20 you the full resources. At least in theory going  
21 forward, you shouldn't have to sue for these  
22 resources. You should be able to plan and get

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16

1 them when you need them which is in the same year  
2 that you're going to run the contract.

3           So full funding is something we got to  
4 figure out how to do going forward. We've got to  
5 make things more efficient. I think Congress told  
6 us that. I think that was the instructions. They  
7 said they were remanding the -- they said this is  
8 a really difficult task, and I think that the  
9 language from the appropriations committee and the  
10 bill was basically that we're in an untenable  
11 situation here in the appropriations committee.  
12 It's up to the senate authorizing committees and  
13 the Administration to figure out how to solve  
14 this. In other words, they said there's still a  
15 problem here, and it needs to be solved. And so  
16 we're asking you to help us solve it. Help us make  
17 this more efficient, and help us make it work  
18 better.

19           We are very much interested in hearing  
20 from you, and we've been hearing from a lot of  
21 you. And I want to thank especially Vickie Hanvey  
22 and James Mackey and all the people that have

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17

1 worked on the workgroup for our side and all the  
2 people that worked on the workgroup for the IHS  
3 side on these issues. Those are very important.

4 I'm going to ask Hanky Ortiz to step  
5 forward and talk to you a little bit about sort of  
6 the next steps for us, what we, you know, a little  
7 bit about what we'd like to hear from you today,  
8 what the questions we're trying to answer are, and  
9 then what we have planned for upcoming  
10 consultations. And then we will want to hear from  
11 you. Thank you.

12 Hanky, please step forward.

13 (Applause)

14 PRESENTATION BY MS. ORTIZ

15 MS. ORTIZ: Thank you, Mr. Washburn.

16 Good afternoon, everyone. My name is Hanky Ortiz.  
17 I'm the Deputy Bureau Director for the Office of  
18 Indian Services for the Bureau of Indian Affairs.  
19 And I oversee several divisions. One of them is  
20 self- determination which includes contract  
21 support costs. So that's why I've been asked to  
22 make these comments.

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18

1 First I wanted to share with you that in  
2 the past five years how we have distributed  
3 contract support costs from the Interior side, and  
4 then I want to share a little bit about the  
5 Contract Support Cost Workgroup and then the work  
6 plan and some of our ideas before we ask you for  
7 all of your comments. I don't want to take too  
8 much time, but I do want to make -- I thought this  
9 might be helpful as far as your making comments.  
10 IN FY 2009, contract support costs were funded at  
11 72.6 percent, in FY '10 at 75.16 percent, in FY  
12 '11 at 97.46 percent, and then in FY '12 at 94.86  
13 percent. And the FY '13 contract support costs  
14 report is currently in the (inaudible) process.  
15 And that should be available for sharing when it's  
16 sent to Congress, and that should be very shortly.

17 Contract support costs, I think many of  
18 you are familiar with how they're paid and the  
19 contract support cost policy. But just to help  
20 with a little bit of understanding, there are  
21 three pools. Pool one includes startup costs and  
22 pre-award costs. Pool two is the base funding

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19

1 that's distributed. And then pool three is the  
2 new funding that's distributed at a bottoms-up  
3 process in Interior.

4           For pool one this year, the BIA has  
5 received \$5 million, and for pool two just under  
6 \$208 million, and for pool three, we received a  
7 \$34 million increase. So those are the funds that  
8 we're working with. Almost -- all of the base  
9 funding has been distributed. The pool three  
10 funding, the new funding, will be distributed  
11 after all of the money has been given out. So the  
12 money has been distributed from Indian Services to  
13 the regional offices and to the Office of Self-  
14 Governance. And from there, the funding is  
15 distributed out to the tribes. So that's the  
16 status of the funding at the BIA right now.

17           We had the meeting with our Contract  
18 Support Cost Workgroup. Most recently, we met in  
19 August of 2013 in Albuquerque, New Mexico, and  
20 February of this year we met with the Contract  
21 Support Cost Workgroup in Washington, D.C. The  
22 Contract Support Cost Workgroup has submitted a

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20

1 letter to Interior and has identified several  
2 recommendations, and we are currently working on  
3 responding to those recommendations. But we were  
4 hoping that Vickie or somebody from the workgroup  
5 could kind of share the comments from the  
6 workgroup because the workgroup has helped us  
7 tremendously in developing the policy, in  
8 identifying and helping us resolve contract  
9 support cost specific issues and -- but right now  
10 we're in the middle of consultation. And part of  
11 our work plan includes the plan of going forward  
12 with tribal consultation.

13           The first tribal consultation we had was  
14 at NCAI in March of this year. And then this is  
15 the second consultation that we've had jointly  
16 with the Indian Health Service. And then we're  
17 also planning a tribal consultation at NCAI in  
18 Anchorage the week of June 8th through 11th. And  
19 I don't think that that day and time has been  
20 identified, but that information will be shared  
21 very shortly.

22           And after that, Interior is planning

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21

1 four additional tribal consultations across the  
2 country where groups of regions could even be more  
3 accessible for them to attend one of those  
4 consultations. So we would have completed by the  
5 end of the consultation process seven  
6 consultations and hopefully giving everyone an  
7 opportunity to participate in that process.

8           But also we have set up a website, and  
9 you can send your consultations -- if you're not  
10 able to make comments today or attend any of the  
11 other consultations, you can submit written  
12 comments to [consultation@bia.gov](mailto:consultation@bia.gov). That's  
13 [consultation@bia.gov](mailto:consultation@bia.gov).

14           We really look forward to hearing your  
15 comments on these questions that we've identified  
16 including:

17           How can we make contract support costs  
18 more predictable?

19           How can we streamline the contracting  
20 and compacting negotiation process?

21           What types of training do tribes need on  
22 contract support costs that we're not already

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22

1 providing, something that would be helpful?

2           How could their contract support cost  
3 policy need to be -- be updated, if at all, to be  
4 more effective?

5           So those are just some of the questions  
6 that we have thought about. Hopefully, you'll  
7 have other comments and be able to help us with  
8 those processes as Dr. Roubideaux and Mr. Washburn  
9 have requested.

10           Thank you very much for your time. I  
11 appreciate the opportunity to share this  
12 information with you and look forward to hearing  
13 your comments.

14                           (Applause)

15           MS. MALERBA: Thank you, Hanky. So in  
16 terms of process, we're going to hear first from  
17 the Contract Support Cost Workgroup from Indian  
18 Health Services. Then we'll open it up to the  
19 floor for suggestions, comments and  
20 recommendations. And I'm going to have to time it  
21 because we're going to bump up against the tribal  
22 caucus. So I'm going to time half the time for

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23

1 Indian Health Services. You'll hear my alarm go  
2 off. And then we'll ask Vickie Hanvey to present  
3 on the BIA Workgroup and then open up the floor to  
4 BIA comments.

5           So that's how the afternoon's going to  
6 go. So I'm going to invite Melanie Fourkiller, who  
7 is the Technical Advisory Workgroup Chair for  
8 Indian Health Services, and she'll give a brief  
9 update. Then I'm going to set the timer, and  
10 we'll ask that everybody come up to the  
11 microphone, and in order to let everybody have an  
12 opportunity to speak, you know, please -- not that  
13 I'm trying to cut down, but if you could keep your  
14 comments succinct so that everyone has an  
15 opportunity to present.

16           Thank you.

17                           PRESENTATION BY MS. FOURKILLER

18           MS. FOURKILLER: Thank you, Chief. I  
19 will be very brief, and you should probably time  
20 me.

21                           (Laughter) (Inaudible) brief so we can  
22 get as many comments in as we can. But just to

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24

1 give you some idea of where the CSC Workgroup has  
2 gone, you've heard earlier today it's now a joint  
3 federal tribal workgroup. We've had one major  
4 meeting, a series of conference calls. The first  
5 priority was getting the 2014 payment out and what  
6 numbers needed to be adjusted in order to make  
7 that payment. You have heard about that just for  
8 IHS. And just to clarify, I'm only talking about  
9 IHS. We have people to talk about DOI later. And  
10 those payments are being made, if they haven't  
11 already been made. So we've got that behind us.

12           And so now we're looking towards what  
13 are the longer-term solutions? They may be very  
14 long-term solutions, and they may be intermediate  
15 solutions. There may be solutions that we can put  
16 into place very soon, as that will improve the  
17 process, improve our numbers and improve our  
18 estimates that will go into our appropriations  
19 requests.

20           So one thing that we've honed in very  
21 quickly on is consistency and consistency in a  
22 number of ways, consistency among the areas and

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25

1 how they negotiate and develop the CSC members  
2 from tribes and a consistency among what the IHS  
3 uses as a sort of standard operating procedure,  
4 for want of a better term, for exclusions and  
5 pass-throughs. And are they using the same kind  
6 of procedures across the agency?

7           And we found that there are some  
8 differences from area to area. There wasn't a  
9 standard type of default position on exclusions  
10 and pass-throughs that would come off before the  
11 calculation is made if they didn't get further  
12 information from a tribe that substantiated those  
13 exclusions and pass-throughs. And so we're  
14 working on (inaudible) of some of those things to  
15 provide that consistency that's sort of the floor  
16 across all of the areas.

17           You've already heard today the chair of  
18 the CSC Workgroup talk about use of the medical  
19 inflation rate. We're not able to use the medical  
20 inflation rate currently because (inaudible) OMB.  
21 That's something we'll be working towards to  
22 develop a position paper around and working with

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26

1 OMB to see if we can get that adjusted to the  
2 medical inflation rate.

3           There's also been discussion about a  
4 two- year spending authority that we could pursue  
5 on behalf of the Indian Health Service. The  
6 Department of Interior has longer spending  
7 authority than the Indian Health Service. Indian  
8 Health Service has to spend all of its money  
9 within the same year that they give the  
10 appropriation, and that really limits the  
11 flexibility in terms of making adjustments later  
12 as rates change and faces change and CSCs are  
13 adjusted. That lends some flexibility to say if we  
14 don't use all of the money set aside for CSC one  
15 year, to make those adjustments in a future year  
16 using the same appropriations. So two-year  
17 spending authority, not to be confused with the  
18 advanced appropriations idea that we've been  
19 advancing. That's a different proposal. But this  
20 would just be pure spending authority for one year  
21 of appropriations that they extended to two years.  
22 So that's just an idea that's been discussed.

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27

1           Again, none of these things are  
2 finalized. The workgroup meets again this week,  
3 Thursday and Friday, in this hotel to continue  
4 working on many of these things.

5           Then, of course, the policy and the  
6 basic calculations that we do each year have to  
7 change in their nature because they're all  
8 structured around -- you heard about pool one,  
9 pool two and pool three. It's all structured  
10 around dealing with a shortfall, you know, because  
11 we had shortfall every year since 1975. So the  
12 policy deals with having a shortfall in the  
13 appropriations. Well, we no longer have that  
14 shortfall. So the policy needs to be completely  
15 restructured to just basically deal with the idea  
16 that we're going to be fully funded every year and  
17 how to request full appropriations accurately,  
18 maybe two and maybe three or four years down the  
19 road and project them accurately. And so the  
20 policy needs to be completely realigned with that  
21 idea, that it's not a shortfall situation we're  
22 dealing with; we're dealing with a fully funded

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2014 Annual Tribal Consultation Conference 05-06-2014

28

1 situation.

2           Accordingly, the shortfall report, we  
3 shouldn't have really a shortfall report any  
4 longer, although it's still required in the  
5 ISDEAA. We really would have a funding report or  
6 a funding allocation report for that year that  
7 would show how each tribe was funded and how they  
8 were fully funded in that year and what  
9 adjustments were made. So those were just some of  
10 the types of things that were being discussed.

11           UNIDENTIFIED SPEAKER: (Inaudible)

12           MS. FOURKILLER: Yes. A lot of the  
13 discussions around how to make, as I said, how to  
14 make these better projections, how to make our  
15 projections more accurate because we're having to  
16 make them -- right now we're working on 2016  
17 appropriations and justifying the budget for 2016.  
18 How do we know that -- how many tribes are going  
19 to come in to self-determination during that  
20 period of time? How many tribes -- what the  
21 inflation rate is going to be to make those  
22 adjustments? Are tribes going to have just more

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2014 Annual Tribal Consultation Conference 05-06-2014

29

1 expanded activity in their compacting? Those  
2 sorts of things.

3           Those types of things can be hard to  
4 predict, but they're not impossible to predict.  
5 And we've been talking about how to better make  
6 those projections. In some ways, we can do that  
7 (inaudible) policy. And right now a tribe could  
8 come in at any time and compact or contract, and  
9 the contract support cost is basically immediately  
10 due. There's very little notice that's required  
11 for a tribe to give the agency in advance of  
12 compacting or contracting. Should it be  
13 considered, it's not even, you know, requiring a  
14 longer notice, asking for a longer notice even if  
15 it's not required. Those sorts of things could  
16 give the agency a better idea of what tribes are  
17 thinking about and what they're planning on down  
18 the road in terms of their self-determination  
19 activities so that that can be better -- those  
20 numbers can be better predicted in the future.

21           And then there's a number of questions  
22 that the chief asked me to share that we talked

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2014 Annual Tribal Consultation Conference 05-06-2014

30

1 about in the Tribal Self-Governance Advisory  
2 Committee that helped us kind of hone in on  
3 thinking about longer- term issues. So I'll just  
4 read those as food for thought as you're thinking  
5 about what your comments or questions need to be  
6 today to direct to Dr. Roubideaux.

7 One is how does IHS plan to project for  
8 budget needs inclusive of projecting new and  
9 expanded contract or compact funding agreements?

10 How do we know the CSC number is  
11 accurate?

12 Is there a simpler way to calculate the  
13 CSC numbers?

14 What are the pros and cons to multi-  
15 group CSC agreements?

16 What are your specific recommendations  
17 for a long-term solution to develop a greater  
18 certainty of CSC funding needs?

19 And what will it take to make CSC a  
20 mandatory appropriation? And we've been  
21 discussing that idea, if you attended the breakout  
22 session on CSC, that was presented today as an

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2014 Annual Tribal Consultation Conference 05-06-2014

31

1 idea. We realize that it may take a while to get  
2 that through Congress, but what would it take, and  
3 are there any downsides to the question of CSC as  
4 a mandatory appropriation?

5 PUBLIC COMMENTS

6 MS. MALERBA: All right. Great. So we  
7 are going to open up the floor for comments,  
8 recommendations, suggestions. And as promised, I  
9 am setting my alarm.

10 MR. ALLEN: And make them introduce  
11 themselves.

12 MS. MALERBA: And please introduce  
13 yourself, although we all know you. Please  
14 introduce yourself and, you know, what tribe  
15 you're representing.

16 MR. GARCIA: Are we on?

17 MS. MALERBA: We're on.

18 MR. GARCIA: Okay. Joe Garcia. I am  
19 from Ohkay Owingeh. I'm a lifetime councilman,  
20 head councilman.

21 First question, it's a question but it's  
22 for clarity's sake. Question is do you all have a

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2014 Annual Tribal Consultation Conference 05-06-2014

32

1 written formula that is used to calculate contract  
2 support costs and indirect costs? You know what  
3 that formula is, right? Everyone should know  
4 that.

5           We can determine the location of an  
6 electron that's running through electric fields at  
7 any point in time if we know some of the variables  
8 and if we know the formula. If we don't know the  
9 formula, it's a guess in the blind.

10           It's the same thing with contract  
11 support costs. It's nothing more than a formula,  
12 and the formula has basically three components.  
13 One component is a percentage of some other given  
14 number that's known, plus another number, given  
15 number that's known, plus another number that's  
16 known and a percentage. And so the formula becomes  
17 nothing more than a summation of variables  
18 multiplied by some factor, each variable  
19 multiplied by some factor. And so in order to  
20 obtain a closer approximation, estimate of what  
21 that dollar is -- would be in terms of determining  
22 the full amount of contract support, you can do

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2014 Annual Tribal Consultation Conference 05-06-2014

33

1 that by having a formula. The formula is included  
2 in all the databases that you all have.

3 I'll give you an example. The first one  
4 is when you calculate indirect rate, every tribe  
5 has a different indirect rate. And so when you  
6 get the funding all summed up, the percentage of  
7 it is taken from that full funding amount, and the  
8 indirect rate -- you come up with indirect rate,  
9 and you add that to your funding amount.

10 It's the same with contract support  
11 because the contract support is calculated on the  
12 same basis that you know how to calculate contract  
13 support. And so it's an easy number to calculate.  
14 The only real challenge then becomes, okay, I  
15 don't have this one tribe. I don't have this one  
16 rate. I have 565 rates if everyone's being paid  
17 contract support numbers. So you simply add those  
18 factors all the way down the line.

19 And do you know those percentage  
20 numbers?

21 DR. ROUBIDEAUX: So --

22 MR. GARCIA: You do.

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2014 Annual Tribal Consultation Conference 05-06-2014

34

1 DR. ROUBIDEAUX: Sometimes we do, and  
2 sometimes we have provisional rates which means  
3 that the rate hasn't either been updated or is  
4 pending. So at a point in time we might not have  
5 --

6 MR. GARCIA: But it's close. You have  
7 the last year's number, and so you can use a  
8 better estimate, so when you do all your  
9 summations, the computer's there. It's a matter  
10 of knowing what formula to implement and what  
11 numbers to pull. But all those numbers are known,  
12 and so that estimate then becomes an easy number  
13 to estimate plus or minus a few thousand dollars  
14 maybe, not -- it would really be like plus or  
15 minus one cent or two cents.

16 But that's the solution that we propose.  
17 But you know, we have to sit down and look at what  
18 are the variables within this one gigantic  
19 formula. But it's not as complicated as trying to  
20 determine where that (inaudible) is going to end  
21 up. I mean it's really complicated to get that.  
22 But this is simple arithmetic, and I think that's

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2014 Annual Tribal Consultation Conference 05-06-2014

35

1 what we need to do. It's just that there are a lot  
2 of variables.

3           But I'd like to sit down personally with  
4 a group or whoever, and let's write down all the  
5 variables and see how close we can come to getting  
6 that estimate, and it will work for IHS because it  
7 doesn't matter if it's IHS or BIA. The formulas  
8 are simple.

9           So I give that and recommend that from  
10 Ohkay Owingeh as a potential solution to get us  
11 closer to the short-term as well as the long-term  
12 solutions for contract support. Thank you.

13           MS. MALERBA: Thank you.

14           DR. ROUBIDEAUX: Thank you for your  
15 comment. I think that's a great way that you have  
16 described it is that it's a formula with a bunch  
17 of variables. Thank you for stating that so  
18 plainly.

19           I think the thing about it is the  
20 formula is there. The variables, that's the  
21 challenge, is we don't always have the information  
22 for them at a point in time. And so what the CSC

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2014 Annual Tribal Consultation Conference 05-06-2014

36

1 Workgroup is doing is looking at all those  
2 variables, seeing where we agree or don't agree  
3 and then finding an agreement. And we've made  
4 progress on that, so we're getting close. But  
5 thank you for that. That was a nice way to  
6 describe it.

7 MR. GARCIA: Yeah. Well, the formulas  
8 do not change. The formula remains the same.  
9 It's the variables within the formula that change.  
10 And so what I'm proposing is that your indirect  
11 rate or the contract support rate doesn't change  
12 every day. It changes in six months or within a  
13 year. But that's a number that you can -- you  
14 know what it is, so you plug that into the  
15 equation and away you go.

16 But let's sit down with a group of  
17 people that can understand that. You all should  
18 understand it. Thank you.

19 MS. MALERBA: Thank you.

20 DR. ROUBIDEAUX: Thank you.

21 MS. MALERBA: All right. So we're going  
22 to go to you and then you. Okay.

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2014 Annual Tribal Consultation Conference 05-06-2014

37

1 MR. BREWER: Thank you. (Inaudible)  
2 Bryan Brewer, President of the Oglala Sioux Tribe,  
3 and I'd like to say that I'm happy to be here  
4 today. You know, it's great to hear both of you  
5 say, you know, we're getting 100 percent, and  
6 we're going to get it. But we had to sue to get  
7 it. We had to sue you to get that money. And my  
8 concern is the future, the future, what's going to  
9 happen? You know, there's no guarantees.

10 You know, IHS, they will allow us close  
11 to \$7 million. I know it's one of your figures.  
12 I'm really worried about how this is going to go.  
13 We have concerns.

14 One of the things I'm going to ask Mr.  
15 Washburn and Dr. Roubideaux that you have to go to  
16 Congress, and you have to fight (inaudible). And  
17 we realize that you work for the federal  
18 government. You're an employee of the federal  
19 government. You represent them. But in this  
20 case, I'm going to ask you to represent us. You  
21 know, you're not selected by us. You're not  
22 elected by us, by the tribes. But we're asking

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2014 Annual Tribal Consultation Conference 05-06-2014

38

1 you because you are natives to support us and  
2 fight for us. You know, we realize you're federal  
3 employees, but I'm begging you, you have to fight  
4 for us. And I know you probably hear that before,  
5 but I have to say it.

6           You know, one of the things that I'm  
7 concerned about is if you perform those services  
8 that there -- you get so much money. If we're  
9 going to do it, if the tribe -- if we let the --  
10 to contract that, there should be parity. We  
11 should get the same amount of what you get if you  
12 run that service. So we're really concerned about  
13 that is that we get the same amounts. There has  
14 to be parity. There has to be -- it just has to  
15 be right.

16           One of the, you know, the Self-  
17 Determination Act, they talk about this, the  
18 parity; it has to be the same. So this is  
19 something that we're looking for. There has to be  
20 an accounting, you know. I think if we're going  
21 to go to Congress, if you're going to go to  
22 Congress every year, there should be a good

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2014 Annual Tribal Consultation Conference 05-06-2014

39

1 accounting of what it costs for you to deliver  
2 those services, what it costs for the tribe to  
3 deliver those services. And I think all that  
4 information should be available to us.

5 But I'd like to thank you, and we're  
6 looking forward to the future. And we're wishing  
7 that the best things will happen for the tribes.  
8 Thank you.

9 MS. MALERBA: Thank you very much.

10 DR. ROUBIDEAUX: Thank you. Just a  
11 quick comment. I really appreciate that comment  
12 about accountability. And if there's one good  
13 thing that's coming out -- there's many good  
14 things coming in the conversations we've been  
15 having over the last couple years on contract  
16 support costs -- is that now we're all learning  
17 more about it. We're all better understanding it,  
18 and that's the way we can hold each other  
19 accountable is by sharing information. So I  
20 really appreciate that comment. Thank you.

21 MR. BREWER: You know, we would have --  
22 if we were given 100 percent years ago, we

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2014 Annual Tribal Consultation Conference 05-06-2014

40

1 wouldn't have had this problem now trying to  
2 figure it out.

3 (Laughter)

4 DR. ROUBIDEAUX: Well, nobody's more  
5 happy than us that we're able to now do that.  
6 Thank you.

7 MS. AUSTIN: Good afternoon. Linda  
8 Austin, Director of Operations for the Ysleta Del  
9 Sur Pueblo in El Paso. And I'm also a Contract  
10 Support Cost Workgroup member for both BIA and  
11 IHS, representing the Albuquerque area. Happy to  
12 be here and able to share.

13 I have two concerns. One is something  
14 new that I heard at a session, the one-on-one  
15 session this morning that was facilitated with  
16 various panelists, IHS included, was that  
17 Department of Treasury was -- there's a concern  
18 that Department of Treasury is going to come back  
19 to the agency and ask for the funds that it has  
20 lent out for the claims. And so there was a  
21 concern about the IHS working under the impression  
22 that that claim is going to be remanded back. And

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2014 Annual Tribal Consultation Conference 05-06-2014

41

1 so if that's the case, where exactly would that be  
2 taken from if that does happen? And it seems as  
3 if the gains that are being made today may be  
4 compromised tomorrow.

5 DR. ROUBIDEAUX: So the issue of the  
6 judgment fund is that by law, the agencies are  
7 required to pay back the funds that are used in  
8 the judgment fund. In practice, we get bills  
9 every month, and we put them in a file, and we  
10 hope nobody's going to come collecting them, and  
11 they haven't so far. Those are the facts.

12 I don't know what's going to happen in  
13 the future. We don't anticipate they're going to  
14 come and get the bills, but that's related to the  
15 claims, the past settlement claims. So we're just  
16 putting the bills in a drawer and hoping they  
17 never come to us for that.

18 The other issue about the impact of the  
19 budget is the topic today which is the long-term  
20 solution, trying to predict the CSC number more so  
21 it won't impact the rest of the budget. I think  
22 that's something we're more concerned about in the

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2014 Annual Tribal Consultation Conference 05-06-2014

42

1 short term. We'll keep filing the bills and keep  
2 being quiet about it and hope nobody comes to pay.  
3 But apparently there is a law that says that we're  
4 supposed to pay, but we're filing the bills and  
5 hoping for the best.

6 MS. AUSTIN: Okay. And my second point  
7 is regarding the distribution of the funding. So  
8 right now, 2014, great on both agencies. The  
9 money is in our system, and in fact, I get to see  
10 how expedited that happened. And I think all  
11 tribes, you know, are -- they're happy about that.

12 But the sad thing was that, especially  
13 with the BIA, is that we did not receive our 2013  
14 contract support funds until this month. That is  
15 simply unacceptable, and we really need to get  
16 better at disbursing those funds. And if we're  
17 able to expedite it in 2014, we can do it from  
18 here on out.

19 Thank you.

20 MS. MALERBA: Thank you.

21 Bryant.

22 MR. ROGERS: Bryant Rogers. I'm an

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2014 Annual Tribal Consultation Conference 05-06-2014

43

1 attorney that represents tribes on CSC stuff for a  
2 long time and co-counsel on Ramah class action.

3 I have two comments. On behalf of the  
4 Mississippi Band of Choctaw Indians and the Pueblo  
5 of Taos and the Pueblo of Jemez, we want to  
6 endorse the notion of the permanent fund,  
7 permanent definite fund solution that was  
8 addressed in the CSC Workgroup (inaudible) session  
9 this morning. The attorneys who worked on that, I  
10 think it was Geoff Strommer, I believe, did an  
11 excellent job summarizing it. He saw so many  
12 problems, and while we thought he was fair to Mr.  
13 Garcia and Chairman Brewer, it is possible to come  
14 up with a formula. That formula, because the  
15 variables can never be accurately, 100 percent  
16 ascertained, will never generate 100 percent of  
17 the right answer. So you're always looking at  
18 some way to fix that. We did a lot of work to get  
19 that last ten percent or that last five percent  
20 accuracy.

21 If you could get us a permanent definite  
22 fund solution, it will eliminate all of that extra

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2014 Annual Tribal Consultation Conference 05-06-2014

44

1 accounting, investigating and guessing. So these  
2 tribes and I myself really strongly endorse that  
3 as part of the long-term solution for both  
4 agencies.

5 I have to say something about the  
6 judgment fund issue and ask that the agencies  
7 advocate what I'm fixing to say to Treasury if  
8 they do come knocking. The judgment fund statute  
9 decision required that we pay the judgment fund  
10 with available funds. But the General Accounting  
11 Office has consistently interpreted the word  
12 "available funds" to mean funds that the agency  
13 does not currently need to carry out the current  
14 year's programs. It's only excess funding that  
15 would ever be subject to a judgment fund payback,  
16 and you don't have any of that anymore. We're  
17 getting it for contract support costs.

18 So it really is not a serious problem.  
19 I hope you advocate that position. And I would  
20 call your attention to Judge Hansen's ruling in  
21 the Ramah case in 1999 or so when he said if the  
22 government tries to repay these indirect cost

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2014 Annual Tribal Consultation Conference 05-06-2014

45

1 judgments from the judgment fund, that would be  
2 charlatanism, and I will not permit it. I'm not  
3 going to let the victim pay their own damages.

4 So don't be passive with it. Just stand  
5 up to Treasury and tell them that.

6 Thank you.

7 MS. MALERBA: Thank you, Bryant.

8 (Applause)

9 MS. MALERBA: And wouldn't it be a happy  
10 day if we did have excess funds, and we had to  
11 repay it? Really, that kind of is the goal at the  
12 end of the day.

13 UNIDENTIFIED SPEAKER: Wouldn't it be  
14 great?

15 MS. MALERBA: So Patty.

16 MS. MAXIM: Good afternoon. My name is  
17 Patty Maxim. I'm an attorney for the Great  
18 Plains.

19 At our last consultation, I had  
20 expressed to Dr. Roubideaux and Mr. Washburn the  
21 concern that Great Plains had no further delay in  
22 the amount of time it takes to get a rate. So I

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2014 Annual Tribal Consultation Conference 05-06-2014

46

1 went back and talked to an accountant who has been  
2 negotiating rates in Great Plains for a long time.  
3 And I asked him to give me the average timeframe.  
4 So he gave me his last one. From the day that the  
5 tribe submitted its application for a new rate, it  
6 was 3 months and 21 days before they heard back.

7           At that point, they were notified that  
8 the individual who they were going to be working  
9 with was very busy, and it took another two months  
10 for her to get back and begin communicating with  
11 the tribal council and the tribal accountants.  
12 Back and forth, took until month 11 before we  
13 finally had the first discussion seriously about a  
14 rate, and both parties reached agreement. But  
15 under the current system, there was two reviews of  
16 that rate negotiation within the department, and  
17 the first review took an additional 4 months and  
18 13 days. And at 18 months and 9 days, the  
19 provisional rate went away.

20           If the department wants to have  
21 certainty, it has to be looking at the amount of  
22 time it takes practically for a tribe who's ready

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2014 Annual Tribal Consultation Conference 05-06-2014

47

1 to go to get that rate finalized. So that's part  
2 of the issue.

3 I think the other part of the issue is  
4 to understand the costs associated with going  
5 through this process. I mean a paid accountant  
6 was constantly following me. I'm trying to get  
7 information out. It's very, very costly.

8 So one of the thoughts that we had was  
9 the importance of timeliness and whether or not we  
10 can somehow either extend out, unless the tribe  
11 itself elects to change its rate. Can we extend  
12 out the period that a rate is in place? Because  
13 we've been so stagnant on budgets, and I greatly  
14 appreciate the efforts of both of you to try and  
15 get those budgets out for certain programs. But  
16 we're not changing substantially. And when we  
17 have particular solutions, for example, I mean  
18 none of it changes. Why are we going back and  
19 spending 18 months of government money and  
20 government time to renegotiate a rate when, for  
21 all practical purposes, nothing has changed? So I  
22 think looking at the length of time that the rates

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2014 Annual Tribal Consultation Conference 05-06-2014

48

1 are going to be applicable would be most helpful.

2 I think the last comment from Great  
3 Plains that I heard and was sent to say is time  
4 limits in delivery of the money is of critical  
5 importance, especially to large, land-based  
6 tribes. And if there is any way that we can get  
7 those indirect cost dollars out, even exceeding  
8 the first quarter in the beginning of October, it  
9 makes a big difference because what's happening  
10 now is most tribes are going to the bank. If  
11 they're short, they have to go out and borrow  
12 under what oftentimes turns out to be some fairly  
13 arduous rates and that that interest rate is never  
14 allowed to be paid out of the money when they  
15 actually get it. So extending the rates and really  
16 seriously taking a look at this.

17 The last point I'll make again is I went  
18 back and looked at A-87, and I looked at all the  
19 OMB circulars, and I looked at the last six or  
20 seven tribal audits. Those minimum internal  
21 controls that the auditors would like as a result  
22 of their read of the OMB circulars and the

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2014 Annual Tribal Consultation Conference 05-06-2014

49

1 direction they get from their agencies, those take  
2 a sizable percentage of the amount of money that  
3 falls into this category into the non-negotiable  
4 area. You know, the fact that we have to have  
5 dual signatures, and we have to multitask and that  
6 we have X amount of (inaudible). All of those are  
7 government-instituted costs, and I think it's  
8 important to just keep reminding the agencies and  
9 the Congress itself, these are costs the tribes  
10 are making up because they think they're good  
11 things to do. Eighty, ninety percent of those  
12 rates are mandated by things that the regulations  
13 in the House and the United States require them to  
14 spend money on.

15           So I'd like to thank you all for all of  
16 your work.

17           And Dr. Roubideaux, I want to take one  
18 more second, please.

19           We have been anxious to have some  
20 conversations out in Aberdeen. It's been about  
21 seven months since we communicated about a one-  
22 time offer, and we haven't heard anything back.

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2014 Annual Tribal Consultation Conference 05-06-2014

50

1 So anything you can do to nudge the attorneys and  
2 others working some on Aberdeen would be  
3 appreciated.

4 Thank you.

5 DR. ROUBIDEAUX: Well, with regard to  
6 that, our attorneys are in the room, so feel free  
7 to take advantage of that. We also recently  
8 adopted a new approach that should be actually be  
9 quicker.

10 One thing I want to mention about that,  
11 I'm glad you brought rates up. One part of this  
12 thing that's so complicated is the indirect rates,  
13 and some tribes have rates with Interior Business  
14 Center. Some tribes have rates with HHS. I mean  
15 IHS actually doesn't set rates. And then your  
16 indirect rate is a part of the calculation of the  
17 contract support clause but then it -- there's  
18 other adjustments that are made.

19 And it's so complicated, and our CSC  
20 Workgroup talked with our federal members about  
21 some of the rate issues, and we were talking about  
22 maybe going -- having some of our staff go over

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2014 Annual Tribal Consultation Conference 05-06-2014

51

1 with CSC Workgroup members and talk with the  
2 Interior Business Center about calculation of  
3 rates and the things like that. So it's a  
4 complicated scenario.

5 Does it have to be so complicated? I  
6 think that's one of the big picture, out of the  
7 box thinking is, you know, everybody has a  
8 different rate. All the different rates are  
9 calculated different ways. They're from different  
10 sources, and they're either provisional or final.

11 And it's really complicated, and I don't  
12 know about -- we need to either fix the way it  
13 works now or figure something else out because  
14 it's definitely -- the rate part of this, we could  
15 spend all day talking about the rate part of the  
16 calculation of the contract support costs. And if  
17 we could find some solutions there, that would  
18 help a lot.

19 MS. MAXIM: Dr. Roubideaux, excuse me.  
20 Just since you targeted this, one other thought I  
21 wanted to leave with you, and that is what we're  
22 calling stovepiping, where we -- and it's a Farm

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2014 Annual Tribal Consultation Conference 05-06-2014

52

1 Bureau issue, but it does apply to some IHS  
2 programs where, for example -- and forgive me,  
3 I'll use law enforcement even though this is the  
4 Bureau, but it applies to many of your health and  
5 children's programs, where you've got half of your  
6 money coming from one agency and another half  
7 coming from another but two completely different  
8 methodologies for calculating the contract  
9 support. This is a part of what comes with your  
10 complicated point.

11 MS. HANVEY: Ron.

12 MR. ALLEN: Lloyd -- oh.

13 MS. MALERBA: Ron has --

14 MR. ALLEN: Oh. I mean Vickie, go  
15 ahead.

16 MS. HANVEY: I apologize, and I wanted  
17 to clarify --

18 MR. ALLEN: Introduce yourself for the  
19 record, if you don't mind.

20 MS. HANVEY: I'm sorry. I'm Vickie  
21 Hanvey, the Self-Governance Administrator for  
22 Cherokee Nation. And I've worked with the DOI and

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2014 Annual Tribal Consultation Conference 05-06-2014

53

1 IHS workgroups for many years. And more recently,  
2 I attended both of the recent workgroup meetings  
3 that we had.

4           One of the things that I wanted to  
5 clarify in regards to the rate negotiations is the  
6 -- and this is from OMB documents. If you are a  
7 tribal government, your rate is negotiated with  
8 the Interior Business Center, which used to be  
9 NBC, the National Business Center, is what it used  
10 to be called. But if you're a tribal government,  
11 you negotiate with them through OMB documents.

12           The default rule is the federal agency  
13 from which you receive most of your funding from.  
14 So if you have other tribal entities such as a  
15 consortium or something like that, those default  
16 to their largest funding source which generally in  
17 our situation is in  
18 HHS.

19           So one of the key players that has been  
20 missing from these discussions has been OMB or the  
21 National Business Center, the -- pardon me. I'm  
22 calling it the old name. The IBC versus the NBC.

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2014 Annual Tribal Consultation Conference 05-06-2014

54

1 But those players need to be at the table.

2 I know that in the DOI Workgroup we  
3 actually talked to some folks from the Interior  
4 Business Center on the phone and were discussing  
5 some things with them. But looking forward, I  
6 think it's a legitimate part of our discussion to  
7 look at the various types of rates. You know, can  
8 we narrow that to a smaller number of rates that  
9 are available, you know, that -- I think all of  
10 that is on the table for discussion. But in order  
11 to have that discussion, we need those folks,  
12 those negotiators at the table to be sure that,  
13 you know, the whole premise of the rate  
14 calculation is that we allocate on a fair,  
15 equitable methodology to where all federal  
16 programs, not just DOI and IHS but (inaudible)  
17 EPA, you know, all those other agencies that are  
18 also affected by those rate premiums. So we need  
19 to have those folks involved in the discussion,  
20 and we started that in -- at least on the DOI  
21 side. I know that that's partially been discussed  
22 during the IHS as well.

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2014 Annual Tribal Consultation Conference 05-06-2014

55

1 MS. MALERBA: Thank you, Vickie.

2 I'm going to recognize Ron Allen and  
3 then you, Andy.

4 MR. ALLEN: For the record, Ron Allen,  
5 Chairman for the Jamestown S'Klallam Tribe.

6 The message that I want to underscore,  
7 Bryant had raised it in his remarks, is with  
8 regard to the mandatory funding option. And you  
9 know, and for those of you who participated in the  
10 discussions, we talked about a draft letter  
11 because in order to get the CSC to become  
12 mandatory so we can -- it doesn't have to compete  
13 against the programs of either BIA or IHS, it's  
14 going to have to be legislated by the authorizing  
15 committee.

16 So we do have a draft letter that Geoff  
17 Strommer had put together for us. And for those  
18 of you who want a copy of it, we can -- you can  
19 get a hold of Geoff, or you can get a hold of any  
20 of us. We can post it on our website. Jennifer,  
21 or somebody in pictures, we get it posted on our  
22 website. So you can pull off of it and edit it

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

56

1 and -- so that it fits your tribe. But it's going  
2 to require a lot of political input with our  
3 congressional leadership to make this happen.  
4 They're going to not want this to happen. They  
5 don't want more in mandatory funding. But quite  
6 frankly, President Brewer, a comment about making  
7 this thing permanent and not having to every worry  
8 about future appropriations, that is going to be  
9 one of our solutions and -- if you're going to  
10 talk really long- term solution.

11           And the only other comment I want to  
12 make is to remind both the BIA and IHS that this  
13 is always going to be a moving target because it  
14 is implementing self-determination, self-  
15 governance. As more tribes take on federal  
16 programs, that number is going to rise.

17           And the third point I wanted to make is  
18 that as we revisit the policy for both  
19 departments, that we modify the policies or to  
20 provide the option for tribes who want to  
21 negotiate a fixed number. For tribes who have  
22 consistent rates, then the idea is to have a

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2014 Annual Tribal Consultation Conference 05-06-2014

57

1 multi-year, consistent number, and then if a  
2 larger percentage of the tribes have negotiated  
3 fixed numbers, it helps to stabilize the overall  
4 need and calculation of the need for upcoming  
5 years.

6           So anyhow, those are some  
7 recommendations that I have for this process.

8           MS. MALERBA: Thank you. I'm going to  
9 do Andy and then you, Lloyd.

10           MR. JOSEPH: (Inaudible) My name is  
11 "Badger" Andy Joseph, Jr., Chair of the Veterans  
12 Committee and the Health and Human Services  
13 Committee for the Confederated Tribes of Colville.  
14 Also represent the Northwest Portland Area Indian  
15 Health Board and sit on the National (inaudible).

16           I appreciate the work that our workgroup  
17 is doing, and I mentioned this morning to Jody  
18 that we're kind of coming up against a roadblock  
19 with OMB on the issue that deals with IHS on the  
20 medical inflation rate. And to me, I think we  
21 need to -- as a workgroup, we all paid the  
22 expenses that we want to deal with the medical

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2014 Annual Tribal Consultation Conference 05-06-2014

58

1 rates versus the nonmedical. To me, I think that  
2 needs to be put in there. And that should be  
3 mandatory also.

4 I agree with the mandatory issue that  
5 Ron talked about that Geoffrey Strommer is working  
6 on. The reason why I like that idea is I work on a  
7 national budget workgroup as well. Sometimes  
8 Congress -- I believe they're giving IHS maybe a  
9 four- or five-percent increase, and if you look at  
10 really the last two years that the budget went,  
11 that never went to the bankroll part of the  
12 budget. So Congress are actually losing ground in  
13 having the medical part of our work move forward.

14 One area that did get an increase was  
15 Purchase and Referred Care. I, you know,  
16 appreciate that as well as the -- getting the  
17 funding to the contract support costs. My  
18 accountant for my tribe was really shocked to see  
19 the money come in the way it did, and anyway, she  
20 thanked me for, you know, doing the work that we  
21 do.

22 And anyway, I -- my main worry is, you

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2014 Annual Tribal Consultation Conference 05-06-2014

59

1 know, the future. I've had to deal with the last  
2 Administration when we were really lucky if we got  
3 any real big increases at all and also worried  
4 about, you know, future sequestration, how that  
5 number's going to play out. Will that cut, you  
6 know, services that come to (inaudible)? You  
7 know, that's a big question.

8           So anyway, my -- our work is cut out for  
9 us. You know, we're going to be here. We need to  
10 really push on OMB to make sure that the medical  
11 inflation rates are used for the IHS work that we  
12 do (inaudible).

13           MS. MALERBA: Thank you.

14           DR. ROUBIDEAUX: One comment in response  
15 to the comments on the mandatory -- for the  
16 proposal to make contract support costs mandatory,  
17 just that part of my comment I'd like to provide  
18 which is support. For the Indian Health Service,  
19 our budget, the way it technically works is we  
20 have two accounts. One is services, and one is  
21 facilities. And the funds within each account  
22 kind of have to all add up.

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2014 Annual Tribal Consultation Conference 05-06-2014

60

1           And so contract support costs actually  
2 lives within our services account. And so changes  
3 around contract support costs don't affect the  
4 facility's account. But changes in the amounts of  
5 contract support costs would impact other things  
6 within the services account.

7           In thinking about the tribal proposal  
8 for -- and that's hard because contract support  
9 costs is a varying number. You have a fixed  
10 account, so that kind of impacts everything else.  
11 One of the benefits I've heard that the mandatory  
12 proposal for CSCs, it would be in a whole separate  
13 account where the numbers could go up, and the  
14 numbers could go down, and they don't really  
15 impact the rest of the budget.

16           And you know, this year's budget we were  
17 fortunate. We had a \$304 million increase, and we  
18 were able to cover most of it. And in this  
19 Administration, we've been getting increases for  
20 the Indian Health Service, and you know, we're  
21 helping predict those as best we can.

22           I worry in another Administration that

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2014 Annual Tribal Consultation Conference 05-06-2014

61

1 we might go back to the way it used to be for the  
2 Indian Health Service when we only got a one, you  
3 know, a \$5 million increase, or we even got a  
4 decrease. And if there is a greater requirement  
5 for CSC during that time, that's where within the  
6 services account it could impact other parts of  
7 the budget.

8           So the importance of this long-term  
9 solution is so important because every dollar in  
10 the Indian Health Service budget is important and  
11 goes to needed services. And so there's a logic  
12 behind, you know, contract support costs is like a  
13 mandatory thing. It goes up and down over time.  
14 But it's in an accountant's discretionary where  
15 he's supposed to know the numbers at a time. And  
16 so that's why, you know, putting it in a whole  
17 separate account, there's sense to that because of  
18 it sort of protects those pots of money from any  
19 kinds of differences.

20           So I just wanted to point out so that in  
21 case people don't know how our budgets work that  
22 that's how that proposal would work is just

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2014 Annual Tribal Consultation Conference 05-06-2014

62

1 separate it all out.

2 MS. MALERBA: Sorry, Lloyd. In terms of  
3 protocol, I'm going to recognize our tribal leader  
4 first. Thank you.

5 Jefferson.

6 MR. KEEL: I don't know about putting me  
7 in front of Lloyd but --

8 (Laughter)

9 MR. KEEL: Thank you. My name is  
10 Jefferson Keel. I'm Lieutenant Governor of the  
11 Chickasaw Nation.

12 I have a couple comments. One is, first  
13 of all, I want to thank both of you, Secretary  
14 Roubideaux for the work that you're doing to get  
15 the money down to the tribes regarding contract  
16 support costs. But my comment is this. We've  
17 talked about putting together a workgroup to sit  
18 and talk about and to determine how we're going to  
19 fix this formula and come up with a new formula.  
20 We've got to be willing, both of you have to be  
21 willing to accept those recommendations and do  
22 something.

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2014 Annual Tribal Consultation Conference 05-06-2014

63

1           So I would recommend if you're going to  
2 put this workgroup together, whoever it is, I know  
3 we got smart people in the room right now, they  
4 can sit and help you to do this. But set a date,  
5 a deadline. By this date, we're going to have a  
6 formula that we can operate with so that we don't  
7 have to do this every year, so we don't have to  
8 come back to Congress next year and say well,  
9 we're still working on this formula. We still  
10 don't have a solution.

11           I believe that you can get a solution  
12 together, and it doesn't take 10 years, 15 years.  
13 I believe you can sit and do that. You got the  
14 smart people. You got the right people in this  
15 room right now. They can sit and develop a  
16 formula that can be used.

17           The other part is you mentioned earlier  
18 about attorneys from both -- and because it's two  
19 different agencies -- there's one in the Interior,  
20 one in HHS -- that have recommendations on how  
21 they can defend their turf. And that's really  
22 what it boils down to.

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2014 Annual Tribal Consultation Conference 05-06-2014

64

1           You know, the attorneys on each side  
2 look at how they can defend whatever it is they've  
3 been charged with doing for their agency. We need  
4 to come together and realize that they attorneys  
5 make recommendations, but you make the decisions.  
6 And you need to decide once and for all if you're  
7 going to do something and then pull forward and  
8 move forward. And I believe once you do that,  
9 then we can really come up with a firm commitment  
10 to Indian country. And that will make it better  
11 for next year, for following years when you go  
12 back to Congress asking for appropriations,  
13 increases and all those things. We don't have to  
14 go back to the drawing board and say here, well,  
15 we're going to develop -- we're going to put  
16 together a task force or a workgroup or a  
17 committee. You know, when all else fails, let's  
18 form a committee and have a meeting. You know,  
19 that's not the answer.

20           Thank you.

21           MS. MALERBA: Thank you. Thank you,  
22 Jefferson.

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2014 Annual Tribal Consultation Conference 05-06-2014

65

1 Lloyd.

2 I asked Dr. Roubideaux to just hold on  
3 her comment, Jefferson, for a second so that Lloyd  
4 can make his comment, and then we'll go to her  
5 because we're going to bump up against my alarm  
6 here so --

7 So talk like a Englander.

8 (Laughter)

9 MR. WASHBURN: Just drop your R's.

10 MR. MILLER: (Inaudible) Lloyd Miller,  
11 and I'm active in the contract support costs  
12 field. I represent the National Tribal Contract  
13 Support Costs Coalition.

14 I mentioned that particular item because  
15 the coalition in 1999 developed a proposal for  
16 mandatory funding of contract support costs. They  
17 proposed a terminate and definite appropriation  
18 for contract support costs. Actually made it  
19 through the House. It was before the Cherokee case  
20 came down and before people had it firmly in mind  
21 that contract support payments would end  
22 (inaudible). Congressman Young championed it. It

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2014 Annual Tribal Consultation Conference 05-06-2014

66

1 went through the House. But it got a huge score.  
2 Contract support costs at that time were believed  
3 to be discretionary. They cost about \$500 billion  
4 a year for the two agencies. CBO looked at that  
5 and multiplied it by ten years, gave it a \$5  
6 million cost. It would not have made it through  
7 the Senate but did get through the House.

8           It's not a new idea; it's an old idea,  
9 but it's an important idea and one that the  
10 coalition fully supports. The language in the  
11 committee report said that the appropriations  
12 committees are in the untenable position of  
13 appropriating discretionary funds for mandatory  
14 (inaudible). So I think the committees are  
15 looking for precisely this kind of solution. I  
16 encourage tribal leadership to support them.

17           Some things, though, are not broken.  
18 The indirect cost rate process is not broken. And  
19 I don't think the indirect cost rate negotiation  
20 process with the National Business Center, the  
21 Division of Cost Allocation or the Department of  
22 Education should be tinkered with. We tolerate 50

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2014 Annual Tribal Consultation Conference 05-06-2014

67

1 tribes -- 50 states in the United States having  
2 different indirect cost rate systems. We tolerate  
3 all of the municipalities in America having  
4 different indirect cost rate systems. We can  
5 tolerate 550 federally recognized tribes having  
6 different indirect cost rate systems.

7 (Alarm sounds)

8 MR. MILLER: With regard to projecting  
9 estimated amounts (inaudible) I'll wind it up.  
10 Projecting estimated amounts, particularly when I  
11 counsel the Secretary, Kevin, to look at what IHS  
12 has done at the start, this is not so hard to do.  
13 You may not know what one particular tribe's  
14 rate's going to be next year, but we have enough  
15 experience over the arc of time to be able to  
16 predict with relative certainty what contract  
17 support costs requirements will be globally, and  
18 Congress has to need to know what they will be  
19 globally.

20 So for instance, if IHS is contracted  
21 out at 60 percent of the agency, you multiply that  
22 by 25 percent because (inaudible) study back in

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2014 Annual Tribal Consultation Conference 05-06-2014

68

1 the 1990s over a 10-year period that the load  
2 Congress holds about 25 percent, we can arrive at  
3 a number. The BIA has never done that but could  
4 do this, and the BIA could estimate forward. You  
5 could estimate when you get \$10 million of new  
6 appropriations when so much of that appropriation  
7 on the average is contractor described, so much of  
8 that now that's contractor described generates a  
9 contract support load. It's simple math, if you  
10 did the simple math that tribal leadership  
11 mentioned earlier in the day.

12           The last thing, however, that I want to  
13 urge is greater transparency. The one thing we  
14 are missing is prompt disclosure of shortfall  
15 reports. I do not know if it would be helpful for  
16 the director to share with us -- I know it's not  
17 her problem. What is the problem upstairs in the  
18 secretary's office that prevents the 2012, not  
19 2013, 2012 shortfall report from being released,  
20 and what can we do, as tribal advocates, to  
21 (inaudible)?

22           Thank you.

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2014 Annual Tribal Consultation Conference 05-06-2014

69

1 MS. MALERBA: Thank you, Lloyd.

2 All right. So Dr. Roubideaux, you may  
3 close it out with some remarks, and then we'll  
4 move right over to the Bureau of Indian Affairs.

5 DR. ROUBIDEAUX: So in terms of  
6 Jefferson Keel, your comment, I completely agree  
7 with you. Let's get this done and over and solved.  
8 I don't want to have to have recurring workgroups  
9 meeting forever. And actually, I said to the CSC  
10 Workgroup the long- term solution is needed as  
11 soon as possible, and the timelines that we're  
12 looking at are if we want the long-term solution  
13 to be implemented for 2015's budget, the  
14 appropriators need our solution by August or  
15 September.

16 And in addition, if we want to put a  
17 long- term solution into the President's Fiscal  
18 Year 2016 budget, we need the solution by August  
19 and September also. So that's my timeframe. I'm  
20 pushing our CSC Workgroup to give us  
21 recommendations to give to Congress by this fall.

22 And I think we can do it because our

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2014 Annual Tribal Consultation Conference 05-06-2014

70

1 work with the IHS CSC Workgroup in January that  
2 looked at the pre-award estimates, we built a  
3 table where we put all of the different things.  
4 We have lots of areas of agreement where -- and  
5 only a few other things to do. So this workgroup  
6 has been extremely productive, and we actually  
7 were able to, in talking about not wanting to wait  
8 for a solution, we already used what we developed  
9 in January to do the distribution by April 30th of  
10 this year's funds for the Indian Health Service.  
11 So we have better assurance that the payments that  
12 went out last week were more fair and were more  
13 consistent for all tribes across the country.

14           And we did get almost all of those  
15 payments out. The only ones we didn't get out  
16 were the ones where we're still negotiating or  
17 that FA's (ph) not signed or we're still in  
18 discussions with the tribe. We still have the rest  
19 of the year to do reconciliation.

20           But I think I'm already seeing progress,  
21 and I want you to know that I'm really anxious for  
22 progress because I want us to find a solution to

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2014 Annual Tribal Consultation Conference 05-06-2014

71

1 this, put it in the past.

2           We got the whole funding for contract  
3 support costs. We are all very happy about that.  
4 On the claims settlement on the IHS side, we are  
5 making progress, and we are seeing settlements  
6 being paid now.

7           The distribution, we figured out how to  
8 do that this year. So really, the only big  
9 pending thing is trying to find this long-term  
10 solution to better predict contract support cost  
11 estimates for the purpose of appropriations, to  
12 better know the number and to not impact the rest  
13 of the budget.

14           And I am fully committed to supporting  
15 our CSC Workgroup to do that work, to try to get  
16 it done so we can give Congress update this fall.  
17 So I'm totally with you, Lieutenant Governor Keel.  
18 I'm totally with you. I want to get this done.

19           MS. MALERBA: All right. Thank you to  
20 all of the folks that offered your comments and  
21 your suggestions. We're most appreciative of  
22 that.

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

72

1           So now we're going to move into the BIA  
2 side of things, and we're going to ask Vickie  
3 Hanvey to do a quick report on the workgroup and  
4 what's occurred to date. And then Ron will be  
5 moderating the Q&A.

6           Thanks. And I'll set my timer for you  
7 if you want.

8                               PRESENTATION BY MS. HANVEY

9           MS. HANVEY: Well, the BIA had a  
10 Contract Support Cost Workgroup that met recently,  
11 and I wanted to reiterate some things that are  
12 different between IHS and DOI just off the top of  
13 my head, as I had actually taken some notes during  
14 the meeting and was going to work with some other  
15 workgroup members to come up with a one-sheet read  
16 to compare the differences between the two so that  
17 it would assist tribes when you're reviewing both  
18 the IHS and DOI.

19           One of the things that I wanted to point  
20 out is that BIA is two-year fund. IHS is one-year  
21 fund. The BIA adopted their CFC policy the first  
22 of the year. I believe it was used as a base

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2014 Annual Tribal Consultation Conference 05-06-2014

73

1 year, 2006. We began the first report, I think,  
2 in 2007. That was actually based upon the IHS  
3 policy. They're not exactly the same but it was  
4 based because the starting point was with the IHS  
5 policy which had been in place for many years and  
6 has a well-established policy and practices in  
7 place to do those calculations. So in other  
8 words, the BIA is newer to the game of contract  
9 support cost shortfall reports and preparing that  
10 data.

11           In regards to that as far as direct  
12 contract support costs, the IHS has a standardized  
13 negotiation where you can sit down and negotiate  
14 what your direct contract support cost is. BIA  
15 does not have a mechanism in place to negotiate  
16 direct contract support costs at this time. So  
17 what we did in the workgroup was (inaudible) under  
18 the default which is 15 percent of your salary.  
19 So if you turn in your pay cost data to the  
20 regional office, you know, that they ask for every  
21 year, that number is what's used to calculate as a  
22 default the direct contract support cost. So

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2014 Annual Tribal Consultation Conference 05-06-2014

74

1 those two things are very different.

2           The other thing is in regards to program  
3 funds, IHS has in some cases excruciatingly  
4 painful processes to come up with with formulas  
5 over the years. But the good part of that is that  
6 there are formulas in place so that when new money  
7 comes in, it's very easy to calculate what those  
8 increases will be and how those funds will be  
9 distributed. That is not the case with BIA in all  
10 circumstances within the BIA. So those are some  
11 differences that (inaudible) between that I can  
12 just think of off the top of my head.

13           With the BIA, what we did in the  
14 workgroup was primarily focus on two different  
15 things. One, the payment, getting the payment  
16 out, reviewing the data in order to get tribes  
17 their funding for 2014. So that was our first  
18 priority was to try to look at that and get folks  
19 their money.

20           Secondly was looking at some  
21 recommendations that we had previously submitted  
22 and revisiting those recommendations in light of

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2014 Annual Tribal Consultation Conference 05-06-2014

75

1 the full funding provisions. So along with that  
2 is the long-term solutions and recommendations for  
3 the work plan which I believe the agencies are due  
4 towards the end of May. I had down May 27th. I  
5 don't know if that's the exact day the -- 17th.  
6 Okay. So in other words, we need to get as a  
7 workgroup some recommendations together for -- to  
8 assist the agency in submitting that information  
9 to Congress.

10           One of the things I wanted to mention  
11 was the process of the discussion with the two  
12 agencies is different. And in the sense of with  
13 the BIA, I will say that those of you who know  
14 James Mackey, he could not be here, but he's the  
15 tribal co-chair of the DOI Workgroup now. And  
16 with his leadership and with us trying to deal  
17 with the FACA issues that have been raised over  
18 the years, what we've done with this workgroup is  
19 have some time where it's open discussion. We  
20 brainstormed, tried to come up with some various  
21 ideas before we go to, if you will, an official  
22 FACA compliant meeting. I don't know how else to

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2014 Annual Tribal Consultation Conference 05-06-2014

76

1 say that. But that really lends itself to open  
2 discussion at the beginning of the meeting because  
3 we get more input and some feedback from others  
4 that are in attendance.

5           One of the things that we discussed is  
6 actually changing the name of the report. We've  
7 all called it the shortfall report since its  
8 inception, and theoretically, if we're 100 percent  
9 funded, we should no longer have a shortfall,  
10 theoretically. But primarily our discussion, and  
11 this has been my position, that that report was  
12 basically used for two different purposes. One  
13 was for allocation of funding. The other was a  
14 report to Congress on the shortfall. And those  
15 two purposes was combined in one worksheet, and  
16 part of our discussion focused on what if we  
17 consider that one is an allocation so that, if you  
18 will, all of the federal agencies whether you look  
19 at NAHASDA, childcare, all of those funding  
20 allocations are readily available for tribes to  
21 see. But the report to Congress could be a  
22 separate report, so that way we could have more

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

77

1 visibility of the members and the allocations.

2           The other thing is also dealing with  
3 consistency, consistency between the regions as  
4 well as the Office of Self-Governance. And that's  
5 within the application of the formula, the  
6 calculation. We want to be sure that everyone has  
7 a clear understanding, and we are consistently  
8 applying the formulas to all regions as well as  
9 the Office of Self- Governance.

10           And I will say that there are some  
11 legitimate differences between 638 tribes and  
12 self- governance tribes on the BIA side. And Nick  
13 has done a tremendous job over the years, but he  
14 relies heavily on the tribes to provide -- the  
15 self-governance tribes to provide him accurate and  
16 complete and timely data. And if he doesn't  
17 receive that, it impedes his ability to do his  
18 job. So he is heavily reliant on the tribes to  
19 provide that data.

20           Another thing that we've addressed is  
21 the BIE schools. Within the self-governance -- or  
22 pardon me, within the shortfall report or if we

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2014 Annual Tribal Consultation Conference 05-06-2014

78

1 wanted to call it the contract support cost  
2 report, there is provisions for the Choctaw  
3 Decision Schools. There's also been an issue  
4 raised with the BIE schools and full contract  
5 support cost funding that different tribes have  
6 raised, and I think that's a legitimate discussion  
7 that we need to have.

8           One of the items that we have dealt with  
9 as far as small and mini tribes, several years ago  
10 the Alaska tribes were having considerable  
11 difficulty within that region of getting  
12 assistance and negotiating agreements, getting  
13 current agreements. And one of the things that we  
14 have proposed or recommended is the possibility of  
15 not just Alaska, but we've found there's other  
16 tribes within the lower 48 that also have similar  
17 issues to Alaska. So we were looking at treating  
18 them similar to the small and mini tribes. That's  
19 a recommendation that we would like to have some  
20 feedback and discussion on.

21           There's got to be a provision for  
22 adjustments for updated rates as well as any

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2014 Annual Tribal Consultation Conference 05-06-2014

79

1 prior- year obligations that current-year funding  
2 comes out through the agency.

3 I've already talked about the Interior  
4 Business Center or what used to be the National  
5 Business Center on rate negotiations. And we  
6 really need to have a discussion about the various  
7 types of rates. Do we want to reduce the number  
8 of or the types of rates that tribes are allowed  
9 to negotiate? Do we want to leave it the same? We  
10 want to be sure that primarily the whole premise  
11 is that tribes are treated equitably within the  
12 distribution and as the premises of governments is  
13 to give as much flexibility to the tribe to  
14 operate their programs and their administrative  
15 operations in a way that best fits their needs.  
16 And so having said that and taking that into  
17 account, what's the best way to go about doing  
18 that?

19 I would like to go ahead and say for the  
20 questions, we also would like to know how do we  
21 know that the CSC number is accurate? When you're  
22 coming to make comments, consider these questions:

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2014 Annual Tribal Consultation Conference 05-06-2014

80

1           How do we know the CSC number is  
2 accurate?

3           Is there a simpler way to calculate CSC  
4 numbers?

5           What are the pros and cons to multi-year  
6 agreements or various types of agreements?

7           What are your specific recommendations  
8 for a long-term solution to develop greater  
9 certainty of CSC funding needs?

10          What will it take to make CSC mandatory  
11 appropriation?

12          Thank you.

13          MR. ALLEN: Whew! Well, with that brief  
14 report --

15                           (Laughter)

16          MR. ALLEN: Vickie, your workgroup's  
17 going to have a lot of issues to talk about.

18          Okay. We'll open it up for testimony.  
19 Bryant. And then, again, repeat your name and who  
20 you're representing.

21          MR. ROGERS: I'm Bryant Rogers, and I'm  
22 one of the technical advisors for the BIA

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81

1 Workgroup and

2 CSC.

3           One of the things I want to mention  
4 that's been an obstacle in the last two years on  
5 both workgroups is access to the shortfall report.  
6 Lloyd alluded to that. But we've been given a  
7 reason for why the tribes can't get access to the  
8 report that to us just doesn't hold water. The  
9 workgroup in a letter to the secretary attacked  
10 the reason. We've heard nothing back. Basically  
11 we've been told that a statute called the Trade  
12 Secrets Act prevents the federal government to  
13 release income information on any party that's  
14 been received by the government. However, if you  
15 research that statute, it says unless otherwise  
16 authorized by law. In the case law, it says that  
17 it's discoverable under the Freedom of Information  
18 Act; it's not protected by the Trade Secrets Act.

19           So the amount of contract awards,  
20 contract support cost amounts, that stuff is  
21 discoverable. It's not secret. It's public money.  
22 So we think the notion that that information can't

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2014 Annual Tribal Consultation Conference 05-06-2014

82

1 be made available to the workgroup because it  
2 violates the Trade Secrets Act is just -- it's  
3 insulting. We've asked you to re- look at that  
4 and back off that. It really makes a difference  
5 if the workgroup can see the draft reports before  
6 they go to Congress. I promise you we can make  
7 them better. Always have found many areas of  
8 inconsistencies between areas that aren't caught  
9 otherwise.

10           So if you want to work in the spirit of  
11 cooperation, you got to make the data available.  
12 It is not legally protected. The reasons we've  
13 been given for why we can't see them are bogus.

14           Now in regard to the issue of full  
15 funding on BIA's side, I don't want us to lose  
16 sight of a couple of things. We're getting close  
17 to full funding. But you're not negotiating DCSC.  
18 You're using 15 percent salaries as approximate.  
19 Fifteen percent salaries, salaries what?  
20 Estimated salaries for that year? No. Pay cost  
21 data or other data from the past. That is data  
22 that's approximate, is maybe an estimate, but it

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2014 Annual Tribal Consultation Conference 05-06-2014

83

1 doesn't tell you the true DCSC needed today. In  
2 fact, it's using pay cost data that's two years  
3 old. So unless a tribe can magically generate  
4 actual costs for 2013 at the beginning of the  
5 year, which is impossible, you're using older data  
6 to estimate their 15 percent salaries.

7           So BIA needs to move forward to open the  
8 door to full negotiation for DCSC like IHS does.  
9 That makes it much better to handle. You can  
10 leave the 15 percent salaries on the table. The  
11 tribes are going to do it. But we really do have  
12 to move forward to get a fuller picture because 15  
13 percent of salaries is not full funding of DCSC.  
14 It's just a shortfall in a short time. It's  
15 originally put in place in 2005 and it's not been  
16 -- we haven't moved off of that. So we're not  
17 getting full funding for DCSC with 15 percent of  
18 salaries.

19           Secondly, there are the BIA-funded,  
20 tribally controlled schools. View of some courts  
21 and the appropriation law, only maybe about 13 or  
22 14 of the schools qualify for CSC. It's called

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2014 Annual Tribal Consultation Conference 05-06-2014

84

1 the Choctaw Decision Schools. They're in the  
2 shortfall report. Really urge that we revisit it,  
3 but every school that meets the criteria  
4 qualified, and that's an easy fix to do to have in  
5 the President's budget request. Basically, you  
6 have to have to -- for that money to be counted  
7 toward indirect, you have to have a rate that will  
8 generate more than the administrative cost rate  
9 that's in the school grant funding formula. And  
10 you just get the difference. So that's problem  
11 one.

12           Problem two, please, BIA, support full  
13 funding for administrative costs because there is  
14 no way for the tribes to pick that up except  
15 taking it out of their school programs. We're  
16 getting 60 percent of their administrative cost  
17 funding now. Even the schools that get the Choctaw  
18 Decision add-on can't fill that gap. They're not  
19 permitted to by statute. So they're left holding  
20 the bag and have to reduce their school funding to  
21 cover those costs or supplement their tribal  
22 money. And it's 165 or so of these tribally

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85

1 operated schools, and they're really hurting and  
2 they're lost in the conversation. I ask that the  
3 secretary, assistant secretary really advocate  
4 filling that hole.

5           In that regard, the workgroup report  
6 that's going to be addressed tomorrow is insulting  
7 and failing utterly to mention that issue. It  
8 talks about more funding for BIE, zero mention of  
9 the need to fully fund administrative costs for  
10 schools.

11           The other thing I wanted to mention is  
12 the issue of payment processing. I know you've  
13 been switched to a new federal financial system,  
14 and I know the Treasury or somebody else told you  
15 you had to do it. But to have six or seven  
16 signatures to get a payment out, that's the  
17 biggest problem that was encountered this year.  
18 You need some way to cut that down. I mean it is  
19 not consistent with ISDA to say tribes should  
20 contract and take over this money, but we'll pay  
21 you when we get around to it after six or seven  
22 people, some of whom have gone on vacation or

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2014 Annual Tribal Consultation Conference 05-06-2014

86

1 whatever; there's nobody to fill the gap? That's  
2 really horrible.

3           And Treasury and those people that run  
4 the financial system have got their own standards  
5 and statutes they have to obey, too, and I  
6 seriously doubt that that would pass muster if it  
7 was challenged.

8           One other thing I wanted to mention on  
9 the BIA side is (inaudible) vocal grant  
10 negotiations for CSC which are ongoing and I will  
11 talk about on the workgroup panel tomorrow and on  
12 the IHS side of the negotiations. Many tribes  
13 said look, we'll take the shortfall report number.  
14 And what were they told? That's not really  
15 representative of what you're owed by the  
16 government. That's just a snapshot (inaudible)  
17 and whatever. And we understand there's room for  
18 negotiation (inaudible).

19           On the BIA side, we're hearing for  
20 tribes that were shown as overpaid, you owe that  
21 money on the shortfall report. I have two  
22 clients, you got -- you need to pay this money

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2014 Annual Tribal Consultation Conference 05-06-2014

87

1 back. You're overpaid. Well, wait a minute. It  
2 says right on the report it is not an evidence of  
3 payment due from either side. And they're being  
4 told that the indirect cost agreement (inaudible)  
5 schedules that have overfunded, underfunded on  
6 them now mean that you owe that money if you're  
7 shown as overfunded. It doesn't mean that. The  
8 template flat out says the fact that there's a  
9 number in the column does not mean the government  
10 owes you money, and it does not mean the tribe  
11 owes the government money. It is just an  
12 indicator that because of the snapshot taken of  
13 that rate negotiation that maybe that's the case.  
14 But that should not generate a demand letter from  
15 the government to the tribe to repay that money.  
16 Okay.

17 I think I'll stop with that.

18 MR. ALLEN: Okay.

19 Any comment you want to make (inaudible)  
20 the testimony?

21 (Applause)

22 MR. ALLEN: Yes.

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88

1 MR. BIG CROW: Good afternoon. My name  
2 is Mason Big Crow. I'm the Treasurer of the  
3 Oglala Sioux Tribe.

4 And you know, I've just got to say that,  
5 you know, it's good that you're talking and  
6 explaining to us the problems. But to me, you're  
7 just sugarcoating what's going on. For the Oglala  
8 Sioux Tribe, you know, like I said, we haven't  
9 received our full funding yet. We never have. I  
10 know we've said it time and time again.

11 Right now, and just go back to the IHS  
12 side, I mean IHS owes us one point -- or sorry,  
13 6.1 million. Back to BIA side, that's 8.9 million.  
14 That comes up on shortfall reports. Just for this  
15 year, I'm sorry, 2013, we've only received  
16 \$102,000 in contract support. We went by the  
17 formula 15 percent of the salaries. That still is  
18 over \$1 million that we're supposed to receive,  
19 105 million -- I'm sorry, 105,000 (inaudible).  
20 And that's not enough.

21 What ends up happening is that we  
22 (inaudible) Tribal Council has to go borrow some

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2014 Annual Tribal Consultation Conference 05-06-2014

89

1 money from the bank just to pay some of these  
2 salaries for some of these programs. It happens a  
3 lot. You know, so for you to sit there and say  
4 that you're doing 100 percent funding, that's, you  
5 know, for us is not the truth and (inaudible).

6 MR. ALLEN: Thank you, Mason.

7 Yes, sir.

8 MR. HOOVER: My name is Mark Hoover. I  
9 was born in the territory of Alaska, and I wasn't  
10 going to say anything. I kind of argued with  
11 myself whether to come up here. But when he said  
12 that you needed seven signatures, in 1975 I worked  
13 on a film. It was called After Self-  
14 Determination, '92, 638 I think it was. And at the  
15 time, one of the first contractors of that law was  
16 (inaudible) Pueblo. We went down there and  
17 interviewed some people there, and they told us  
18 that they had to follow the process of all these  
19 checks because it took so long and had to go  
20 through so many people; they finally figured out  
21 who the people were, and at certain times they'd  
22 just go back to that office and say well, you're

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2014 Annual Tribal Consultation Conference 05-06-2014

90

1 doing a great job and then sign the check and go  
2 on. And they had to go through that process the  
3 whole time just to get that.

4 I think it was because the BIA at the  
5 time felt those people were losing their jobs if  
6 they contracted with the tribe. And I think they  
7 fought it really hard.

8 But I hear the people that have become  
9 really good at bureaucracy, and then you hear the  
10 people that have become really good at law and  
11 then try to hear myself kind of sitting in the  
12 middle. And don't get me wrong. I really enjoy  
13 the back and forth that you guys have. But the  
14 village people are like the soul, and if it wasn't  
15 for those people that are still in villages, none  
16 of us would even be here. I think of a few people  
17 as maybe the head; they're trying to figure out  
18 all this stuff. And personally, myself, I'm just  
19 one of the body parts that is trying to coordinate  
20 so that we can all function as a body.

21 The creator sent us here to learn  
22 certain things, and we were created in his image,

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2014 Annual Tribal Consultation Conference 05-06-2014

91

1 and we learn from all the manifestations of God  
2 that the image is kindness, justice, honesty.  
3 That's what makes a human being, and we're so far  
4 away from that now we're, you know, it's hard to  
5 figure out a lot of this stuff but -- so  
6 hopefully, we can kind of get back on that track.  
7 It sounds like people are starting to move  
8 forward, BIA, IHS funding.

9           And so that's all I have to say. Thank  
10 you.

11           MR. ALLEN: Thank you.

12                           (Applause)

13           MR. GARCIA: Joe Garcia again from Ohkay  
14 Owingeh, New Mexico.

15           We have issues back in the southwest  
16 region, and Ohkay Owingeh is only -- this is only  
17 our third year into self-governance. But I  
18 thought things were going smoothly the first year,  
19 but we've run into problems with the Bureau, the  
20 agency level and the southwest region area, in  
21 terms of getting the dollar flow done  
22 expeditiously to the tribal government.

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2014 Annual Tribal Consultation Conference 05-06-2014

92

1 I was just in discussion today with the  
2 Office of Self-Governance about where those  
3 dollars are, and it turns out that, you know, the  
4 culprit is -- has been the region, I believe, in  
5 terms of whatever process is used to transfer  
6 funds from one entity to the next and then finally  
7 to the tribe. And so that's a dilemma.

8 And there's a couple of tribes that are  
9 newer than Ohkay Owingeh, so I feel for them  
10 because they may be going through the same issues.  
11 And one of the problems that we've seen is the  
12 fact that we still do not have a replacement for  
13 Office of Self- Governance liaison, if you will,  
14 from the Bureau side in the southwest region. And  
15 so the problem will probably continue to persist  
16 unless we fix that part of it. And it can't be  
17 just anyone assigned to do that function because  
18 they have to be aware of what's involved in  
19 negotiating the compact and the funding agreements  
20 and whatnot as well as the full process for how  
21 the dollars flow depending on which program it is.  
22 And so I hope that those issues are being fixed at

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2014 Annual Tribal Consultation Conference 05-06-2014

93

1 this point in time.

2 Now negotiations for 2015 will be coming  
3 in July. And so I do really hope that those --  
4 you have the personnel to handle that.

5 And I also want to speak on behalf of  
6 Picuris Pueblo, one of the smaller pueblos in New  
7 Mexico now. They are not a self-governance tribe.  
8 They have numerous contracts I think under 638 as  
9 well as some direct services provided to them.  
10 And they've been (inaudible) and primarily the  
11 issue they face is that they have not had any 638  
12 contract dollars since around September or October  
13 of last year.

14 And so they're a small tribe to begin  
15 with, and they're hurting for resources. And I've  
16 been authorized by the governor to speak on their  
17 behalf. And I think Mr. Washburn is actually --  
18 you do have the documents that provided to you so  
19 I hope that -- they're supposed to be having a  
20 meeting this week sometime in the region. So  
21 hopefully they'll resolve all of that.

22 But the primary thing is dollars haven't

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2014 Annual Tribal Consultation Conference 05-06-2014

94

1 flowed. And if they don't flow, they're --  
2 they've already -- losing a lot of people up there  
3 so --

4 But thank you for the time, and thank  
5 you all for listening in, and thank you for being  
6 here. I know you all are trying.

7 And I saw a chart today provided by the  
8 Alaska group. It's about a facility that they  
9 owned and they showed a curve showed how much they  
10 would be able to make a difference if they had  
11 control versus noncontrol. That's the way I view  
12 tribes and federal government is that the tribe  
13 sometimes, if you're a direct serve you have no  
14 control. And so you're not going to make any  
15 changes in the system no matter what you say or  
16 what you do. But if you have control, as do self-  
17 governance tribes, to some extent, we're still  
18 seeing that. Well, we have better, greater  
19 control, but the fact still remains that the  
20 origination of these funds still are under the  
21 control of the federal government. So unless we  
22 fix those -- that part of it, we're still in the

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2014 Annual Tribal Consultation Conference 05-06-2014

95

1 same boat.

2           But I think that that's really what  
3 we're working toward, and my recommendation that I  
4 made earlier, I was hoping to get an invitation by  
5 somebody to go and present this formula that I  
6 talked about. But no one asked me. So I'll  
7 probably just work my way in brute force and  
8 attend one of the sessions so we can give a  
9 demonstration.

10           The only way if you don't know that that  
11 will work or won't work is to try it. But if you  
12 already believe that it's just too complicated, it  
13 ain't going to work, then what's the point of  
14 making a recommendation, and what's the point of  
15 consultation? I've got the formula written out.  
16 Just let's work some numbers, numbers that you  
17 have, and see if the -- if it really comes out to  
18 the right number in the end, plus or minus \$2.  
19 But you know, that's the only way we can know if  
20 it will work or not. Let's try it. And unless  
21 somebody else has come up with a better way,  
22 everything that I've heard about points to that --

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2014 Annual Tribal Consultation Conference 05-06-2014

96

1 in that direction.

2 Thank you for allowing me the time.

3 MR. ALLEN: Thank you, Joe.

4 Anybody else?

5 (No audible response)

6 MR. ALLEN: I would like to make another  
7 comment on behalf of Jamestown S'klallem Tribe  
8 with regard to the (inaudible) matter. Patty  
9 Marks (sic) mentioned earlier about getting --  
10 making the policy and the system work so that the  
11 contract support money can get to the tribes more  
12 timely. This was an awkward year. We do know  
13 that. But past years have shown that the contract  
14 support does reach the tribes slower on the BIA  
15 side than it does on the IHS side. So I don't know  
16 exactly what the difference is in your system, but  
17 the bottom line is that, you know, tribes don't  
18 have the money. Many tribes, most tribes don't  
19 have the money to frontload the -- or to front the  
20 federal government for federal functions.

21 And the other point I want to make is  
22 kind of a little bit about what Lloyd Miller had

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2014 Annual Tribal Consultation Conference 05-06-2014

97

1 mentioned, you know, that OMB circular, the old A-  
2 87 which is called the super circular now, I  
3 guess, basically identifies what's an allowable  
4 cost. So they're allowable costs, and what we're  
5 not going to do is pursue a simplified system that  
6 takes away allowable costs. I mean it's a  
7 complicated system, and it's used by other  
8 entities. I mean Lloyd referenced cities, but you  
9 know, the contractors of all sorts use it. And I  
10 know that universities use it, too.

11           So I think the tribal leaders are very  
12 interested in trying to simplify a system. But we  
13 do need to make sure we're recovering what's  
14 allowable costs for carrying out these federal  
15 functions and carrying out these contractual  
16 obligations. So that, you know, in the interest  
17 of simplification we don't want to cause harm to  
18 being able to recover the appropriate cost  
19 recoveries for carrying out these functions. So  
20 that's a big deal from my perspective.

21           And we want to make sure that as we  
22 update the policy that we do a couple things:

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2014 Annual Tribal Consultation Conference 05-06-2014

98

1 Make it more timely, and make sure that we don't  
2 undermine the tribes' ability.

3 I remember when Ross Swimmer when -- and  
4 his administration were proposing a flat 15  
5 percent, and the tribes went ballistic over that,  
6 you know, because if you have a large base, 15  
7 percent might make sense. But if you've got  
8 smaller bases, then it doesn't work. And most  
9 tribes sort of have smaller bases, and so the  
10 rates will vary.

11 Anyhow, so I just wanted to make those  
12 points.

13 Bryant, do you have another comment?

14 MR. ROGERS: One final comment about the  
15 notion of limiting the kind of raise that the  
16 tribes might be allowed to negotiate. I really  
17 don't think the Interior Department or IHS has  
18 anything to say about that. The tribes have a  
19 right to negotiate the same kind of rates as  
20 everybody else, and they have a right to negotiate  
21 more than that. In the Ramah settlement PSA III,  
22 Interior in particular and IHS acknowledged that

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2014 Annual Tribal Consultation Conference 05-06-2014

99

1 the rates generated under that settlement  
2 (inaudible) IHS also requires that the tribes be  
3 allowed to negotiate fixed rates, final rates,  
4 provisional final rates, special rates, et cetera,  
5 and that's not something you all can change. We  
6 have a court order, and it was not appealed. It's  
7 the law.

8 Now if the statute changes, that would  
9 be different. But as a matter of policy, you  
10 cannot take away from the tribes those options.  
11 And I'd ask you not to even remotely consider it.

12 Thank you.

13 MR. ALLEN: Thank you, Bryant.

14 (Applause)

15 MR. ALLEN: All right. Any other  
16 testimony or remarks with regard to the contract  
17 support consultation?

18 (No audible response)

19 MR. ALLEN: If not, we'll close.

20 Do either of you want to make some  
21 closing remarks?

22 CLOSING REMARKS BY MR. WASHBURN

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2014 Annual Tribal Consultation Conference 05-06-2014

100

1 MR. WASHBURN: Yeah. Let me just say  
2 that we heard a lot of wisdom here, and I want to  
3 thank everybody who -- not just everybody who  
4 spoke but everybody who stuck around to listen as  
5 well because we all need to be smart on these  
6 things to get things done. And I've heard  
7 suggestions about things we need to do in  
8 Congress, and I've heard suggestions about things  
9 that we need to do in the agencies. We probably  
10 do need to make progress in both places.

11 I think for our purposes immediately,  
12 we're not just coming up with a request to  
13 Congress. We're coming up with things that we can  
14 do internally in our agencies. So I encourage you  
15 to focus on those things over our next few  
16 consultation sessions so that we can try to just  
17 do the things that we know that we can accomplish  
18 because the Obama Administration only has about 2  
19 1/2 years left, and we want to get this fixed.

20 We also can ask Congress for some  
21 things, and that certainly should be on the table.  
22 But please help us focus on the things that we can

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2014 Annual Tribal Consultation Conference 05-06-2014

101

1 do alone because I can't guarantee anything's  
2 going to happen in Congress these days. But I  
3 know that we can try to make some improvements  
4 with our processes, and we desperately want to do  
5 that.

6 We're really grateful for all the wisdom  
7 and all the feedback. And again, I want to thank  
8 you all for staying so long to participate in  
9 this.

10 I will be here bright and early at 8:15  
11 in the morning to speak. I expect every one of  
12 you to be here.

13 (Laughter)

14 MR. GARCIA: Go get in early tonight so  
15 you can be here.

16 (Applause)

17 MR. ALLEN: Andy.

18 MR. JOSEPH: One thing I would like to  
19 recommend is that both of you ask OMB to take some  
20 tutors to Indian country and see what our needs  
21 really are because I don't believe they really  
22 understand, you know, how things are on our

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2014 Annual Tribal Consultation Conference 05-06-2014

102

1 reservations. I know I've seen, you know, some of  
2 you here. But OMB needs to come here, too. Maybe  
3 they'll understand, you know, why we ask them for  
4 what we need.

5 MR. ALLEN: Good suggestion, Andy.

6 Thank you.

7 Dr. Roubideaux.

8 CLOSING REMARKS BY DR. ROUBIDEAUX

9 DR. ROUBIDEAUX: Just very quickly,  
10 again, thank you so much for your input. We  
11 really appreciate it. I think that the dialogue  
12 that's been started on this even back to earlier  
13 in the year has been so helpful, and all the ideas  
14 that are coming up are making us all think a  
15 little bit harder how to get this done. I know we  
16 have.

17 Congress definitely wants us to get an  
18 answer to them this fall if we can, and so we'll  
19 have more opportunities for consultation. And I  
20 will be relying heavily on my IHS CSC Workgroup,  
21 Tribal Self- Governance Advisory Committee and  
22 Direct Service Advisory Committee to help with

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2014 Annual Tribal Consultation Conference 05-06-2014

103

1 this process. But we want to make sure all tribes  
2 have an opportunity to give input. Thank you so  
3 much for being here.

4 We're all listening. Nobody knows the  
5 solution right now, but I think good ideas are  
6 starting to be generated, and hopefully we'll get  
7 there soon. Thank you.

8 MR. ALLEN: Great. Thank you.

9 Okay. Let's get a round of applause.

10 (Applause)

11 MR. ALLEN: All right. Then I'm going  
12 to ask the federal representatives to try to exit  
13 as quickly as possible. We've got to have a  
14 tribal caucus before tomorrow's DOI, BIA meetings.  
15 So we're going to try to resume that here within  
16 five to ten minutes.

17 It should be fairly brief, folks. I  
18 know you're being patient.

19 (Whereupon, the proceedings

20 adjourned at 5:34 p.m.)

21

22

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104

1 CERTIFICATE OF COURT REPORTER

2 I, SAN HINES, the reporter before whom the  
3 foregoing hearing was taken, do hereby certify  
4 that the witness whose testimony appears in the  
5 foregoing deposition was duly sworn by me; that  
6 the testimony of said witness was recorded by me  
7 and thereafter reduced to typewriting under my  
8 direction; that said deposition is a true record  
9 of the testimony given by said witness; that I am  
10 neither counsel for, related to, nor employed by  
11 any of the parties to the action in which this  
12 deposition was taken; and, further, that I am not  
13 a relative or employee of any counsel or attorney  
14 employed by the parties hereto, nor financially or  
15 otherwise interested in the outcome of this  
16 action.

17

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20

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SAN HINES

21

22

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105

1 CERTIFICATE OF TRANSCRIPTION

2 I, KAREN EHATT, hereby certify that I am not the  
3 Court Reporter who reported the following  
4 proceeding and that I have typed the transcript of  
5 this proceeding using the Court Reporter's notes  
6 and recordings. The foregoing/attached transcript  
7 is a true, correct, and complete transcription of  
8 said proceeding.

9

10

11

12

13

14 \_\_\_\_\_  
May 16, 2014

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KAREN EHATT, CET  
Transcriptionist

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Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<u>        </u> \$	<b>1700</b> 1:10	<b>3</b> 46:6	<b>93</b> 3:9
<b>\$1</b> 88:18	<b>17th</b> 75:5	<b>3:42</b> 4:1	<b>94.86</b> 18:12
<b>\$10</b> 8:2 68:5	<b>18</b> 46:18 47:19	<b>30th</b> 70:9	<b>95</b> 3:10
<b>\$102,000</b> 88:16	<b>1849</b> 1:14	<u>        </u> 4	<b>97.46</b> 18:12
<b>\$2</b> 95:18	<b>1975</b> 27:11 89:12	<u>        </u> 4 46:17	<u>        </u> A
<b>\$208</b> 19:6	<b>1990s</b> 68:1	<b>477</b> 14:17	<b>A-87</b> 48:18
<b>\$271</b> 7:22	<b>1999</b> 44:21 65:15	<b>48</b> 78:16	<b>Aberdeen</b> 49:20
<b>\$304</b> 60:17	<u>        </u> 2	<u>        </u> 5	50:2
<b>\$34</b> 19:7	<u>        </u> 2 100:18	<b>5:34</b> 103:20	<b>ability</b> 77:17 98:2
<b>\$5</b> 19:5 61:3 66:5	<b>2005</b> 83:15	<b>50</b> 66:22 67:1	<b>able</b> 6:18 8:3
<b>\$500</b> 66:3	<b>2006</b> 73:1	<b>550</b> 67:5	15:22 21:10 22:7
<b>\$7</b> 37:11	<b>2007</b> 73:2	<b>565</b> 33:16	25:19 40:5,12
<u>        </u> 1	<b>2009</b> 18:10	<u>        </u> 6	42:17 60:18
<b>1/2</b> 100:19	<b>2012</b> 68:18,19	<u>        </u> 6 1:7 3:3	67:15 70:7 94:10
<b>10</b> 18:11 63:12	<b>2013</b> 19:19 42:13	<b>6.1</b> 88:13	97:18
<b>100</b> 37:5 39:22	68:19 83:4 88:15	<b>60</b> 67:21 84:16	<b>accept</b> 62:21
43:15,16 76:8	<b>2014</b> 1:3,7 6:21	<b>638</b> 14:16 77:11	<b>access</b> 81:5,7
89:4	7:8,21 9:12	89:14 93:8,11	<b>accessible</b> 21:3
<b>100-297</b> 14:18	11:18 24:5	<b>67</b> 3:8	<b>accomplish</b> 100:17
<b>105</b> 88:19	42:8,17 74:17	<u>        </u> 7	<b>Accordingly</b> 28:2
<b>105,000</b> 88:19	105:14	<b>72.6</b> 18:11	<b>account</b> 7:22
<b>10-year</b> 68:1	<b>2015</b> 12:6 93:2	<b>75.16</b> 18:11	59:21
<b>11</b> 18:12 46:12	<b>2015's</b> 69:13	<u>        </u> 8	60:2,4,6,10,13
<b>11th</b> 20:18	<b>2016</b> 12:7 28:16,17	<b>8.9</b> 88:13	61:6,17 79:17
<b>12</b> 3:4 18:12	69:18	<b>8:15</b> 101:10	<b>accountability</b>
<b>13</b> 18:13 46:18	<b>202-208-6843</b> 1:15	<b>87</b> 97:2	39:12
83:21	<b>20240</b> 1:14	<b>8th</b> 20:18	<b>accountable</b> 39:19
<b>14</b> 83:22	<b>21</b> 46:6	<u>        </u> 9	<b>accountant</b> 46:1
<b>15</b> 6:21 63:12	<b>22</b> 3:6	<b>9</b> 46:18	47:5 58:18
73:18 82:18	<b>22202</b> 1:10	<b>92</b> 89:14	<b>accountants</b> 15:5
83:6,10,12,17	<b>25</b> 67:22 68:2	<u>        </u> 3	46:11
88:17 98:4,6	<b>27th</b> 75:4		<b>accountant's</b>
<b>16</b> 3:5 105:14	<b>29</b> 3:7		61:14
<b>165</b> 84:22	<u>        </u> 3		<b>accounting</b> 15:7
			38:20 39:1
			44:1,10

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>accounts</b> 59:20</p> <p><b>accuracy</b> 43:20</p> <p><b>accurate</b> 28:15 30:11 77:15 79:21 80:2</p> <p><b>accurately</b> 27:17,19 43:15</p> <p><b>achieved</b> 14:22</p> <p><b>acknowledged</b> 98:22</p> <p><b>across</b> 21:1 25:6,16 70:13</p> <p><b>Act</b> 38:17 81:12,18 82:2</p> <p><b>action</b> 43:2 104:11,16</p> <p><b>active</b> 65:11</p> <p><b>activities</b> 29:19</p> <p><b>activity</b> 29:1</p> <p><b>actual</b> 9:2 83:4</p> <p><b>actually</b> 11:17 48:15 50:8,15 54:3 58:12 60:1 65:18 69:9 70:6 72:13 73:2 76:6 93:17</p> <p><b>ad</b> 6:7</p> <p><b>add</b> 33:9,17 59:22</p> <p><b>addition</b> 69:16</p> <p><b>additional</b> 21:1 46:17</p> <p><b>add-on</b> 84:18</p> <p><b>addressed</b> 43:8 77:20 85:6</p> <p><b>adjourned</b> 103:20</p> <p><b>adjusted</b> 24:6 26:1,13</p>	<p><b>adjustments</b> 26:11,15 28:9,22 50:18 78:22</p> <p><b>administration</b> 6:20 16:13 59:2 60:19,22 98:4 100:18</p> <p><b>administrative</b> 79:14 84:8,13,16 85:9</p> <p><b>Administrator</b> 52:21</p> <p><b>administrators</b> 13:9</p> <p><b>adopted</b> 50:8 72:21</p> <p><b>advance</b> 9:2 29:11</p> <p><b>advanced</b> 26:18</p> <p><b>advancing</b> 26:19</p> <p><b>advantage</b> 50:7</p> <p><b>advice</b> 7:20</p> <p><b>advisors</b> 80:22</p> <p><b>Advisory</b> 9:18 10:21 23:7 30:1 102:21,22</p> <p><b>advocate</b> 44:7,19 85:3</p> <p><b>advocates</b> 68:20</p> <p><b>Affairs</b> 17:18 69:4</p> <p><b>affect</b> 60:3</p> <p><b>affected</b> 54:18</p> <p><b>afternoon</b> 5:19 6:11 17:16 40:7 45:16 88:1</p> <p><b>afternoon's</b> 23:5</p> <p><b>against</b> 22:21 55:13 57:18 65:5</p>	<p><b>agencies</b> 8:10,16 41:6 42:8 44:4,6 49:1,8 54:17 63:19 66:4 75:3,12 76:18 100:9,14</p> <p><b>agency</b> 25:6 29:11,16 40:19 44:12 52:6 53:12 64:3 67:21 75:8 79:2 91:20</p> <p><b>ago</b> 39:22 78:9</p> <p><b>agreement</b> 11:14,16 36:3 46:14 70:4 87:4</p> <p><b>agreements</b> 30:9,15 78:12,13 80:6 92:19</p> <p><b>ahead</b> 52:15 79:19</p> <p><b>ain't</b> 95:13</p> <p><b>alarm</b> 23:1 31:9 65:5 67:7</p> <p><b>Alaska</b> 78:10,15,17 89:9 94:8</p> <p><b>Albuquerque</b> 19:19 40:11</p> <p><b>Allen</b> 2:3 4:3 6:2 10:22 12:17 31:10 52:12,14,18 55:2,4 80:13,16 87:18,22 89:6 91:11 96:3,6 99:13,15,19 101:17 102:5 103:8,11</p> <p><b>allocate</b> 54:14</p> <p><b>allocation</b> 28:6 66:21 76:13,17</p>	<p><b>allocations</b> 76:20 77:1</p> <p><b>allow</b> 37:10</p> <p><b>allowable</b> 97:3,4,6,14</p> <p><b>allowed</b> 48:14 79:8 98:16 99:3</p> <p><b>allowing</b> 96:2</p> <p><b>alluded</b> 81:6</p> <p><b>alone</b> 101:1</p> <p><b>already</b> 21:22 24:11 25:17 70:8,20 79:3 94:2 95:12</p> <p><b>am</b> 31:9,18 71:14 104:9,12 105:2</p> <p><b>America</b> 67:3</p> <p><b>among</b> 10:6 11:20 24:22 25:2</p> <p><b>amount</b> 9:8 32:22 33:7,9 38:11 45:22 46:21 49:2,6 81:19</p> <p><b>amounts</b> 38:13 60:4 67:9,10 81:20</p> <p><b>Anchorage</b> 20:18</p> <p><b>Andy</b> 2:16 55:3 57:9,11 101:17 102:5</p> <p><b>ANNUAL</b> 1:3</p> <p><b>answer</b> 17:8 43:17 64:19 102:18</p> <p><b>anticipate</b> 41:13</p> <p><b>anticipated</b> 8:7</p> <p><b>anxious</b> 49:19 70:21</p> <p><b>anybody</b> 5:7,21</p>
--	---	---	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

96:4 <b>anyhow</b> 57:6 98:11 <b>anymore</b> 44:16 <b>anyone</b> 92:17 <b>anything</b> 49:22 50:1 89:10 98:18 <b>anything's</b> 101:1 <b>anyway</b> 58:19,22 59:8 <b>apologize</b> 52:16 <b>apparently</b> 42:3 <b>appealed</b> 99:6 <b>appears</b> 104:4 <b>applause</b> 12:16,20 13:4 17:13 22:14 45:8 87:21 91:12 99:14 101:16 103:9,10 <b>applicable</b> 48:1 <b>application</b> 46:5 77:5 <b>applies</b> 52:4 <b>apply</b> 52:1 <b>applying</b> 77:8 <b>appreciate</b> 12:8 22:11 39:11,20 47:14 57:16 58:16 102:11 <b>appreciated</b> 50:3 <b>appreciative</b> 71:21 <b>approach</b> 50:8 <b>appropriate</b> 97:18 <b>appropriating</b> 66:13 <b>appropriation</b> 7:8,13 9:3,7	10:4,17 26:10 30:20 31:4 65:17 68:6 80:11 83:21 <b>appropriations</b> 7:7 8:14,15 10:11 12:1,14 16:9,11 24:18 26:16,18,21 27:13,17 28:17 56:8 64:12 66:11 68:6 71:11 <b>appropriators</b> 69:14 <b>approximate</b> 82:18,22 <b>approximation</b> 32:20 <b>April</b> 70:9 <b>arc</b> 67:15 <b>arduous</b> 48:13 <b>area</b> 25:8 40:11 49:4 57:14 58:14 91:20 <b>areas</b> 9:21 11:14,21 24:22 25:16 70:4 82:7,8 <b>aren't</b> 82:8 <b>argued</b> 89:10 <b>arithmetic</b> 34:22 <b>Arlington</b> 1:10 <b>arrive</b> 68:2 <b>ascertained</b> 43:16 <b>aside</b> 26:14 <b>assigned</b> 92:17 <b>assist</b> 72:17 75:8 <b>assistance</b> 78:12 <b>assistant</b> 12:17	85:3 <b>associated</b> 47:4 <b>assurance</b> 70:11 <b>attacked</b> 81:9 <b>attend</b> 21:3,10 95:8 <b>attendance</b> 76:4 <b>attended</b> 30:21 53:2 <b>attention</b> 44:20 <b>attorney</b> 43:1 45:17 104:13 <b>attorneys</b> 43:9 50:1,6 63:18 64:1,4 <b>audible</b> 96:5 99:18 <b>audit</b> 15:7 <b>auditors</b> 15:5 48:21 <b>audits</b> 48:20 <b>August</b> 19:19 69:14,18 <b>Austin</b> 2:13 40:7,8 42:6 <b>authority</b> 26:4,7,17,20 <b>authorized</b> 81:16 93:16 <b>authorizing</b> 16:12 55:14 <b>available</b> 18:15 39:4 44:10,12 54:9 76:20 82:1,11 <b>average</b> 46:3 68:7 <b>awards</b> 81:19 <b>aware</b> 92:18	<b>away</b> 36:15 46:19 91:4 97:6 99:10 <b>awkward</b> 96:12 <hr/> <p style="text-align: center;">B</p> <hr/> <b>Badger</b> 2:16 57:11 <b>bag</b> 84:20 <b>ballistic</b> 98:5 <b>Band</b> 43:4 <b>bank</b> 48:10 89:1 <b>bankroll</b> 58:11 <b>base</b> 18:22 19:8 72:22 98:6 <b>based</b> 11:15 73:2,4 <b>bases</b> 98:8,9 <b>basic</b> 27:6 <b>basically</b> 8:9 16:10 27:15 29:9 32:12 76:12 81:10 84:5 97:3 <b>basis</b> 33:12 <b>become</b> 55:11 90:8,10 <b>becomes</b> 32:16 33:14 34:12 <b>begging</b> 38:3 <b>begin</b> 46:10 93:14 <b>beginning</b> 48:8 76:2 83:4 <b>behalf</b> 4:22 26:5 43:3 93:5,17 96:7 <b>behind</b> 24:11 61:12 <b>believe</b> 43:10 58:8 63:11,13 64:8 72:22 75:3 92:4
---	--	---	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>95:12 101:21 <b>believed</b> 66:2 <b>benefits</b> 60:11 <b>best</b> 39:7 42:5 60:21 79:15,17 <b>better</b> 11:15 16:18 25:4 28:14 29:5,16,19,20 34:8 39:17 42:16 64:10 70:11 71:10,12 82:7 83:9 94:18 95:21 <b>BIA</b> 5:2,17,18 14:9 19:4,16 23:3,4 35:7 40:10 42:13 55:13 56:12 68:3,4 72:1,9,20,21 73:8,14 74:9,10,13 75:13 77:12 80:22 83:7 84:12 86:9,19 88:13 90:4 91:8 96:14 103:14 <b>BIA-funded</b> 83:19 <b>BIA's</b> 82:15 <b>BIE</b> 77:21 78:4 85:8 <b>biggest</b> 85:17 <b>bill</b> 16:10 <b>billion</b> 66:3 <b>bills</b> 41:8,14,16 42:1,4 <b>bit</b> 5:16 10:1 17:5,7 18:4,20 96:22 102:15 <b>blind</b> 32:9 <b>board</b> 57:15 64:14 <b>boat</b> 95:1</p>	<p><b>body</b> 5:11 90:19,20 <b>bogus</b> 82:13 <b>boils</b> 63:22 <b>born</b> 89:9 <b>borrow</b> 48:11 88:22 <b>bottom</b> 96:17 <b>bottoms-up</b> 19:2 <b>box</b> 51:7 <b>brainstormed</b> 75:20 <b>breakout</b> 30:21 <b>Brewer</b> 2:12 37:1,2 39:21 43:13 56:6 <b>brief</b> 23:8,19,21 80:13 103:17 <b>bright</b> 101:10 <b>broken</b> 66:17,18 <b>brought</b> 50:11 <b>brute</b> 95:7 <b>Bryan</b> 2:12 37:2 <b>Bryant</b> 2:14 42:21,22 45:7 55:7 80:19,21 98:13 99:13 <b>budget</b> 7:11 8:3 9:11,14 10:16 28:17 30:8 41:19,21 58:7,10,12 59:19 60:15,16 61:7,10 69:13,18 71:13 84:5 <b>budgeting</b> 9:6 <b>budgets</b> 9:1</p>	<p>47:13,15 61:21 <b>built</b> 70:2 <b>bump</b> 22:21 65:5 <b>bunch</b> 35:16 <b>Bureau</b> 17:17,18 52:1,4 69:4 91:19 92:14 <b>bureaucracy</b> 90:9 <b>Business</b> 50:13 51:2 53:8,9,21 54:4 66:20 79:4,5 <b>busy</b> 46:9 <hr/><b>C</b><hr/><b>calculate</b> 10:14 30:12 32:1 33:4,12,13 73:21 74:7 80:3 <b>calculated</b> 10:19 33:11 51:9 <b>calculating</b> 52:8 <b>calculation</b> 11:15 25:11 50:16 51:2,16 54:14 57:4 77:6 <b>calculations</b> 27:6 73:7 <b>Capital</b> 1:17 <b>Care</b> 7:16 8:5 58:15 <b>carry</b> 44:13 <b>carrying</b> 97:14,15,19 <b>case</b> 37:20 41:1 44:21 61:21 65:19 74:9 81:16 87:13</p>	<p><b>cases</b> 74:3 <b>category</b> 49:3 <b>caucus</b> 22:22 103:14 <b>caught</b> 82:8 <b>cause</b> 97:17 <b>CBO</b> 66:4 <b>cent</b> 34:15 <b>Center</b> 50:14 51:2 53:8,9,21 54:4 66:20 79:4,5 <b>cents</b> 34:15 <b>certain</b> 47:15 89:21 90:22 <b>certainly</b> 100:21 <b>certainty</b> 30:18 46:21 67:16 80:9 <b>CERTIFICATE</b> 104:1 105:1 <b>certify</b> 104:3 105:2 <b>CET</b> 105:14 <b>cetera</b> 99:4 <b>CFC</b> 72:21 <b>chair</b> 23:7 25:17 57:11 <b>Chairman</b> 43:13 55:5 <b>challenge</b> 33:14 35:21 <b>challenged</b> 86:7 <b>challenges</b> 14:10 <b>championed</b> 65:22 <b>chance</b> 8:19 11:5 <b>change</b> 10:12,13,15 26:12 27:7</p>
--	--	---	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>36:8,9,11 47:11 99:5</p> <p><b>changed</b> 47:21</p> <p><b>changes</b> 36:12 47:18 60:2,4 94:15 99:8</p> <p><b>changing</b> 47:16 76:6</p> <p><b>charged</b> 64:3</p> <p><b>charlatanism</b> 45:2</p> <p><b>chart</b> 94:7</p> <p><b>check</b> 90:1</p> <p><b>checks</b> 89:19</p> <p><b>Cherokee</b> 52:22 65:19</p> <p><b>Chickasaw</b> 62:11</p> <p><b>chief</b> 2:4 23:18 29:22</p> <p><b>childcare</b> 76:19</p> <p><b>children's</b> 52:5</p> <p><b>Choctaw</b> 43:4 78:2 84:1,17</p> <p><b>Churchill</b> 13:15</p> <p><b>circular</b> 97:1,2</p> <p><b>circulars</b> 48:19,22</p> <p><b>circumstances</b> 74:10</p> <p><b>cities</b> 97:8</p> <p><b>City</b> 1:9</p> <p><b>claim</b> 40:22</p> <p><b>claims</b> 7:1 40:20 41:15 71:4</p> <p><b>clarification</b> 12:2</p> <p><b>clarify</b> 24:8 52:17 53:5</p> <p><b>clarity's</b> 31:22</p>	<p><b>class</b> 43:2</p> <p><b>clause</b> 50:17</p> <p><b>clear</b> 77:7</p> <p><b>clearly</b> 7:9 10:16</p> <p><b>clients</b> 86:22</p> <p><b>close</b> 34:6 35:5 36:4 37:10 69:3 82:16 99:19</p> <p><b>closer</b> 32:20 35:11</p> <p><b>closing</b> 3:9,10 99:21,22 102:8</p> <p><b>coalition</b> 65:13,15 66:10</p> <p><b>co-chair</b> 75:15</p> <p><b>co-counsel</b> 43:2</p> <p><b>coffers</b> 14:12</p> <p><b>collecting</b> 41:10</p> <p><b>column</b> 87:9</p> <p><b>Colville</b> 57:13</p> <p><b>combined</b> 76:15</p> <p><b>comes</b> 10:17 42:2 52:9 74:7 79:2 88:14 95:17</p> <p><b>coming</b> 39:13,14 52:6,7 57:18 79:22 93:2 100:12,13 102:14</p> <p><b>comment</b> 35:15 39:11,20 48:2 56:6,11 59:14,17 62:16 65:3,4 69:6 87:19 96:7 98:13,14</p> <p><b>comments</b> 3:7 4:16 5:13,17 6:17 12:12 17:22 18:7,9 20:5</p>	<p>21:10,12,15 22:7,13,19 23:4,14,22 30:5 31:5,7 43:3 59:15 62:12 71:20 79:22</p> <p><b>commitment</b> 64:9</p> <p><b>committed</b> 71:14</p> <p><b>committee</b> 9:18 10:21 12:1 16:9,11 30:2 55:15 57:12,13 64:17,18 66:11 102:21,22</p> <p><b>committees</b> 16:12 66:12,14</p> <p><b>communicated</b> 49:21</p> <p><b>communicating</b> 46:10</p> <p><b>compact</b> 29:8 30:9 92:19</p> <p><b>compacting</b> 21:20 29:1,12</p> <p><b>Company</b> 1:17</p> <p><b>compare</b> 72:16</p> <p><b>compete</b> 55:12</p> <p><b>complete</b> 77:16 105:7</p> <p><b>completed</b> 21:4</p> <p><b>completely</b> 27:14,20 52:7 69:6</p> <p><b>complexity</b> 14:21</p> <p><b>compliant</b> 75:22</p> <p><b>complicated</b> 8:21 14:5 34:19,21 50:12,19 51:4,5,11 52:10</p>	<p>95:12 97:7</p> <p><b>component</b> 32:13</p> <p><b>components</b> 32:12</p> <p><b>compromised</b> 41:4</p> <p><b>computer's</b> 34:9</p> <p><b>concern</b> 37:8 40:17,21 45:21</p> <p><b>concerned</b> 38:7,12 41:22</p> <p><b>concerns</b> 37:13 40:13</p> <p><b>Confederated</b> 57:13</p> <p><b>conference</b> 1:3 7:3 10:2 24:4</p> <p><b>confused</b> 26:17</p> <p><b>Congress</b> 7:5,10 8:7 9:4 11:22 16:5 18:16 31:2 37:16 38:21,22 49:9 58:8,12 63:8 64:12 67:18 68:2 69:21 71:16 75:9 76:14,21 82:6 100:8,13,20 101:2 102:17</p> <p><b>congressional</b> 56:3</p> <p><b>Congressman</b> 65:22</p> <p><b>cons</b> 30:14 80:5</p> <p><b>consider</b> 76:17 79:22 99:11</p> <p><b>considerable</b> 78:10</p> <p><b>considered</b> 29:13</p> <p><b>consistency</b> 24:21,22 25:2,15 77:3</p>
---	---	--	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>consistent</b> 11:20 56:22 57:1 70:13 85:19</p> <p><b>consistently</b> 44:11 77:7</p> <p><b>consortium</b> 53:15</p> <p><b>constantly</b> 47:6</p> <p><b>consultation</b> 1:3 4:8,11 6:13 20:10,12,13,15,1 7 21:5 45:19 95:15 99:17 100:16 102:19</p> <p><b>consultation@bia.gov</b> 21:12,13</p> <p><b>consultations</b> 17:10 21:1,4,6,9,11</p> <p><b>continue</b> 27:3 92:15</p> <p><b>contract</b> 1:5 4:19 5:15,22 6:13,20 7:6,12,15,17 8:5,11,20,22 9:6,13,19 11:2,19 12:13 13:3 15:11,13,17 16:2 17:20 18:3,5,10,13,17, 19 19:17,20,22 20:8 21:17,22 22:2,17 29:8,9 30:9 32:1,10,22 33:10,11,12,17 35:12 36:11 38:10 39:15 40:9 42:14 44:17 50:17 51:16 52:8 58:17 59:16 60:1,3,5,8 61:12 62:15 65:11,12,16,18,2</p>	<p>1 66:2 67:16 68:9 71:2,10 72:10 73:8,12,14,16,22 78:1,4 81:19,20 85:20 88:16 93:12 96:11,13 99:16</p> <p><b>contracted</b> 67:20 90:6</p> <p><b>contracting</b> 21:19 29:12</p> <p><b>contractor</b> 68:7,8</p> <p><b>contractors</b> 89:15 97:9</p> <p><b>contracts</b> 14:16,17 93:8</p> <p><b>contractual</b> 97:15</p> <p><b>control</b> 94:11,14,16,19,2 1</p> <p><b>controlled</b> 14:18 83:20</p> <p><b>controls</b> 48:21</p> <p><b>convening</b> 11:12</p> <p><b>conversation</b> 85:2</p> <p><b>conversations</b> 11:5 39:14 49:20</p> <p><b>cooperation</b> 82:11</p> <p><b>coordinate</b> 90:19</p> <p><b>copy</b> 55:18</p> <p><b>correct</b> 105:7</p> <p><b>cost</b> 7:6 9:6,19 18:5,19 19:18,21,22 20:9 22:2,17 29:9 40:10 44:22 48:7 66:3,6,18,19,21 67:2,4,6 71:10</p>	<p>72:10 73:9,14,19,22 78:1,5 81:20 82:20 83:2 84:8,16 87:4 97:4,18</p> <p><b>costly</b> 47:7</p> <p><b>costs</b> 1:5 6:14,21 7:12,18 8:6,12,20,22 9:13 11:2,20 12:13 13:3 15:11 17:21 18:3,10,13,17,21 ,22 21:17,22 32:2,11 39:1,2,16 44:17 47:4 49:7,9 51:16 58:17 59:16 60:1,3,5,9 61:12 62:16 65:11,13,16,18 66:2 67:17 71:3 73:12,16 83:4 84:13,21 85:9 97:4,6,14</p> <p><b>council</b> 46:11 88:22</p> <p><b>councilman</b> 31:19,20</p> <p><b>counsel</b> 67:11 104:10,13</p> <p><b>counted</b> 84:6</p> <p><b>country</b> 21:2 64:10 70:13 101:20</p> <p><b>couple</b> 39:15 62:12 82:16 92:8 97:22</p> <p><b>course</b> 27:5</p> <p><b>court</b> 99:6 104:1 105:3,5</p>	<p><b>courts</b> 83:20</p> <p><b>cover</b> 60:18 84:21</p> <p><b>covered</b> 8:1</p> <p><b>created</b> 90:22</p> <p><b>creator</b> 90:21</p> <p><b>credit</b> 13:6,7</p> <p><b>criteria</b> 84:3</p> <p><b>critical</b> 48:4</p> <p><b>Crow</b> 2:19 88:1,2</p> <p><b>Crystal</b> 1:9</p> <p><b>CSC</b> 5:5,7 7:1 10:3,8,10 11:9,11,15 12:4 24:1 25:1,18 26:14 30:10,13,15,18,1 9,22 31:3 35:22 41:20 43:1,8 50:19 51:1 55:11 61:5 69:9,20 70:1 71:15 79:21 80:1,3,9,10 81:2 83:22 86:10 102:20</p> <p><b>CSCs</b> 26:12 60:12</p> <p><b>culprit</b> 92:4</p> <p><b>current</b> 44:13 46:15 78:13</p> <p><b>currently</b> 18:14 20:2 25:20 44:13</p> <p><b>current-year</b> 79:1</p> <p><b>curve</b> 94:9</p> <p><b>cut</b> 23:13 59:5,8 85:18</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> 1:14 19:21</p> <p><b>damages</b> 45:3</p>
---	---	--	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>data</b> 73:10,19 74:16 77:16,19 82:11,21 83:2,5</p> <p><b>databases</b> 33:2</p> <p><b>date</b> 12:9 63:4,5 72:4</p> <p><b>Davis</b> 1:10</p> <p><b>day</b> 20:19 36:12 45:10,12 46:4 51:15 68:11 75:5</p> <p><b>days</b> 6:18 46:6,18 101:2</p> <p><b>DCSC</b> 82:17 83:1,8,13,17</p> <p><b>deadline</b> 63:5</p> <p><b>deal</b> 27:15 57:22 59:1 75:16 97:20</p> <p><b>dealing</b> 27:10,22 77:2</p> <p><b>deals</b> 27:12 57:19</p> <p><b>dealt</b> 78:8</p> <p><b>decades</b> 13:2,12</p> <p><b>decide</b> 64:6</p> <p><b>decided</b> 6:20</p> <p><b>decision</b> 44:9 78:3 84:1,18</p> <p><b>decisions</b> 64:5</p> <p><b>decrease</b> 61:4</p> <p><b>default</b> 25:9 53:12,15 73:18,22</p> <p><b>defend</b> 63:21 64:2</p> <p><b>definite</b> 43:7,21 65:17</p> <p><b>definitely</b> 51:14 102:17</p> <p><b>Del</b> 40:8</p>	<p><b>delay</b> 45:21</p> <p><b>deliver</b> 39:1,3</p> <p><b>delivery</b> 48:4</p> <p><b>demand</b> 87:14</p> <p><b>demonstration</b> 95:9</p> <p><b>department</b> 1:13 4:18 26:6 40:17,18 46:16,20 66:21 98:17</p> <p><b>departments</b> 56:19</p> <p><b>depending</b> 92:21</p> <p><b>deposition</b> 104:5,8,12</p> <p><b>Deputy</b> 17:17</p> <p><b>describe</b> 36:6</p> <p><b>described</b> 35:16 68:7,8</p> <p><b>desperately</b> 101:4</p> <p><b>determination</b> 17:20 28:19 38:17 89:14</p> <p><b>determine</b> 32:5 34:20 62:18</p> <p><b>determining</b> 32:21</p> <p><b>develop</b> 7:5 25:1,22 30:17 63:15 64:15 80:8</p> <p><b>developed</b> 65:15 70:8</p> <p><b>developing</b> 20:7</p> <p><b>dialogue</b> 102:11</p> <p><b>difference</b> 48:9 82:4 84:10 94:10 96:16</p>	<p><b>differences</b> 25:8 61:19 72:16 74:11 77:11</p> <p><b>different</b> 4:11 5:16 9:3 14:15 26:19 33:5 51:8,9 52:7 63:19 67:2,4,6 70:3 72:12 74:1,14 75:12 76:12 78:5 99:9</p> <p><b>differently</b> 14:15,19</p> <p><b>difficult</b> 16:8</p> <p><b>difficulty</b> 78:11</p> <p><b>dilemma</b> 92:7</p> <p><b>direct</b> 30:6 73:11,14,16,22 93:9 94:13 102:22</p> <p><b>direction</b> 49:1 96:1 104:8</p> <p><b>director</b> 17:17 40:8 68:16</p> <p><b>disbursing</b> 42:16</p> <p><b>disclosure</b> 68:14</p> <p><b>discoverable</b> 81:17,21</p> <p><b>discretionary</b> 10:10 61:14 66:3,13</p> <p><b>discussed</b> 26:22 28:10 54:21 76:5</p> <p><b>discussing</b> 30:21 54:4</p> <p><b>discussion</b> 26:3 46:13 54:6,10,11,19 75:11,19 76:2,10,16</p>	<p>78:6,20 79:6 92:1</p> <p><b>discussions</b> 9:20,21 11:3 12:11 28:13 53:20 55:10 70:18</p> <p><b>distributed</b> 11:18 18:2 19:1,2,9,10,12,1 5 74:9</p> <p><b>distribution</b> 42:7 70:9 71:7 79:12</p> <p><b>Division</b> 66:21</p> <p><b>divisions</b> 17:19</p> <p><b>doctors</b> 15:4</p> <p><b>document</b> 4:16</p> <p><b>documents</b> 53:6,11 93:18</p> <p><b>DOI</b> 24:9 52:22 54:2,16,20 72:12,18 75:15 103:14</p> <p><b>dollar</b> 32:21 61:9 91:21</p> <p><b>dollars</b> 34:13 48:7 92:3,21 93:12,22</p> <p><b>done</b> 4:11 12:5 67:12 68:3 69:7 71:16,18 75:18 77:13 91:21 100:6 102:15</p> <p><b>door</b> 83:8</p> <p><b>doubt</b> 86:6</p> <p><b>downsides</b> 31:3</p> <p><b>Dr</b> 2:5 3:3,10 4:21 6:9,11 22:8 30:6 33:21 34:1 35:14 36:20 37:15</p>
--	--	---	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>39:10 40:4 41:5 45:20 49:17 50:5 51:19 59:14 65:2 69:2,5 102:7,8,9</p> <p><b>draft</b> 55:10,16 82:5</p> <p><b>drawer</b> 41:16</p> <p><b>drawing</b> 64:14</p> <p><b>drop</b> 65:9</p> <p><b>dual</b> 49:5</p> <p><b>due</b> 29:10 75:3 87:3</p> <p><b>duly</b> 104:5</p> <p><b>during</b> 11:1 28:19 54:22 61:5 72:13</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>earlier</b> 24:2 63:17 68:11 95:4 96:9 102:12</p> <p><b>early</b> 101:10,14</p> <p><b>easier</b> 15:8</p> <p><b>easy</b> 15:7 33:13 34:12 74:7 84:4</p> <p><b>edit</b> 55:22</p> <p><b>education</b> 12:9 66:22</p> <p><b>effective</b> 22:4</p> <p><b>efficient</b> 14:8,20 16:5,17</p> <p><b>efforts</b> 47:14</p> <p><b>EHATT</b> 105:2,14</p> <p><b>Eighty</b> 49:11</p> <p><b>either</b> 34:3 47:10 51:10,12 55:13 87:3 99:20</p> <p><b>EI</b> 40:9</p>	<p><b>elected</b> 37:22</p> <p><b>electric</b> 32:6</p> <p><b>electron</b> 32:6</p> <p><b>elects</b> 47:11</p> <p><b>eliminate</b> 43:22</p> <p><b>else</b> 5:21 51:13 60:10 64:17 75:22 85:14 95:21 96:4 98:20</p> <p><b>employed</b> 104:10,14</p> <p><b>employee</b> 37:18 104:13</p> <p><b>employees</b> 38:3</p> <p><b>encountered</b> 85:17</p> <p><b>encourage</b> 66:16 100:14</p> <p><b>endorse</b> 43:6 44:2</p> <p><b>enforcement</b> 52:3</p> <p><b>engaging</b> 15:1</p> <p><b>Englander</b> 65:7</p> <p><b>enjoy</b> 90:12</p> <p><b>entities</b> 53:14 97:8</p> <p><b>entity</b> 92:6</p> <p><b>EPA</b> 54:17</p> <p><b>equation</b> 36:15</p> <p><b>equitable</b> 54:15</p> <p><b>equitably</b> 79:11</p> <p><b>especially</b> 16:21 42:12 48:5</p> <p><b>estimate</b> 9:6 32:20 34:8,12,13 35:6 68:4,5 82:22 83:6</p> <p><b>estimated</b> 67:9,10 82:20</p>	<p><b>estimates</b> 11:13 24:18 70:2 71:11</p> <p><b>estimating</b> 8:11,22</p> <p><b>et</b> 99:4</p> <p><b>everybody</b> 4:14 6:12 11:19 23:10,11 51:7 98:20 100:3,4</p> <p><b>everyone</b> 17:16 21:6 23:14 32:3 77:6</p> <p><b>everyone's</b> 33:16</p> <p><b>everything</b> 60:10 95:22</p> <p><b>evidence</b> 87:2</p> <p><b>evolving</b> 10:5</p> <p><b>exact</b> 75:5</p> <p><b>exactly</b> 41:1 73:3 96:16</p> <p><b>example</b> 33:3 47:17 52:2</p> <p><b>exceeding</b> 48:7</p> <p><b>excellent</b> 43:11</p> <p><b>except</b> 84:14</p> <p><b>excess</b> 44:14 45:10</p> <p><b>exclusions</b> 25:4,9,13</p> <p><b>excruciatingly</b> 74:3</p> <p><b>excuse</b> 51:19</p> <p><b>exhausted</b> 13:17</p> <p><b>exit</b> 103:12</p> <p><b>expanded</b> 29:1 30:9</p> <p><b>expect</b> 101:11</p> <p><b>expedite</b> 42:17</p>	<p><b>expedited</b> 42:10</p> <p><b>expeditiously</b> 91:22</p> <p><b>expenses</b> 57:22</p> <p><b>experience</b> 67:15</p> <p><b>explaining</b> 88:6</p> <p><b>explanatory</b> 8:8</p> <p><b>expressed</b> 45:20</p> <p><b>extend</b> 47:10,11</p> <p><b>extended</b> 26:21</p> <p><b>extending</b> 48:15</p> <p><b>extent</b> 94:17</p> <p><b>extra</b> 43:22</p> <p><b>extremely</b> 70:6</p> <p><b>eye</b> 4:4</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>FACA</b> 75:17,22</p> <p><b>face</b> 93:11</p> <p><b>faces</b> 26:12</p> <p><b>facilitated</b> 40:15</p> <p><b>facilities</b> 7:17 59:21</p> <p><b>facility</b> 94:8</p> <p><b>facility's</b> 60:4</p> <p><b>fact</b> 8:21 14:14 42:9 49:4 83:2 87:8 92:12 94:19</p> <p><b>factor</b> 32:18,19</p> <p><b>factors</b> 33:18</p> <p><b>facts</b> 41:11</p> <p><b>failing</b> 85:7</p> <p><b>fails</b> 64:17</p> <p><b>fair</b> 11:20 43:12 54:14 70:12</p>
---	--	---	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

Page 9

<p><b>fairly</b> 48:12 103:17</p> <p><b>fall</b> 69:21 71:16 102:18</p> <p><b>falls</b> 49:3</p> <p><b>familiar</b> 18:18</p> <p><b>Farm</b> 51:22</p> <p><b>FA's</b> 70:17</p> <p><b>February</b> 19:20</p> <p><b>federal</b> 11:17 14:6 15:14 24:3 37:17,18 38:2 50:20 53:12 54:15 56:15 76:18 81:12 85:13 94:12,21 96:20 97:14 103:12</p> <p><b>federally</b> 67:5</p> <p><b>feedback</b> 76:3 78:20 101:7</p> <p><b>feel</b> 13:19 50:6 92:9</p> <p><b>felt</b> 90:5</p> <p><b>field</b> 65:12</p> <p><b>fields</b> 32:6</p> <p><b>Fifteen</b> 82:19</p> <p><b>fight</b> 37:16 38:2,3</p> <p><b>figure</b> 11:4 14:1 16:4,13 40:2 51:13 90:17 91:5</p> <p><b>figured</b> 71:7 89:20</p> <p><b>figures</b> 37:11</p> <p><b>file</b> 41:9</p> <p><b>filing</b> 42:1,4</p> <p><b>fill</b> 84:18 86:1</p> <p><b>filling</b> 85:4</p>	<p><b>film</b> 89:13</p> <p><b>final</b> 51:10 98:14 99:3,4</p> <p><b>finalized</b> 27:2 47:1</p> <p><b>finally</b> 13:13 46:13 89:20 92:6</p> <p><b>financial</b> 85:13 86:4</p> <p><b>financially</b> 104:14</p> <p><b>finding</b> 36:3</p> <p><b>firm</b> 64:9</p> <p><b>firmly</b> 65:20</p> <p><b>first</b> 9:16 13:2 18:1 20:13 22:16 24:4 31:21 33:3 46:13,17 48:8 62:4,12 72:21 73:1 74:17 89:15 91:18</p> <p><b>Fiscal</b> 7:8 9:11 12:6 69:17</p> <p><b>fits</b> 56:1 79:15</p> <p><b>five</b> 18:2 43:19 103:16</p> <p><b>five-percent</b> 58:9</p> <p><b>fix</b> 43:18 51:12 62:19 84:4 92:16 94:22</p> <p><b>fixed</b> 10:4 56:21 57:3 60:9 92:22 99:3 100:19</p> <p><b>fixing</b> 44:7</p> <p><b>flat</b> 87:8 98:4</p> <p><b>flexibility</b> 26:11,13 79:13</p> <p><b>floor</b> 22:19 23:3 25:15 31:7</p> <p><b>flow</b> 91:21 92:21</p>	<p>94:1</p> <p><b>flowed</b> 94:1</p> <p><b>focus</b> 5:15,17 74:14 100:15,22</p> <p><b>focused</b> 76:16</p> <p><b>folks</b> 54:3,11,19 71:20 74:18 103:17</p> <p><b>food</b> 30:4</p> <p><b>force</b> 5:6,7 64:16 95:7</p> <p><b>foregoing</b> 104:3,5</p> <p><b>foregoing/ attached</b> 105:6</p> <p><b>forever</b> 69:9</p> <p><b>forgive</b> 52:2</p> <p><b>form</b> 64:18</p> <p><b>formula</b> 32:1,3,8,9,11,12, 16 33:1 34:10,19 35:16,20 36:8,9 43:14 62:19 63:6,9,16 77:5 84:9 88:17 95:5,15</p> <p><b>formulas</b> 35:7 36:7 74:4,6 77:8</p> <p><b>formulation</b> 10:16</p> <p><b>forth</b> 46:12 90:13</p> <p><b>fortunate</b> 60:17</p> <p><b>forward</b> 6:17 7:20 11:4 12:11,14 14:2 15:21 16:4 17:5,12 20:11 21:14 22:12 39:6 54:5 58:13 64:7,8 68:4 83:7,12 91:8</p>	<p><b>fought</b> 90:7</p> <p><b>Fourkiller</b> 2:9 3:6 23:6,17,18 28:12</p> <p><b>frankly</b> 14:21 56:6</p> <p><b>free</b> 50:6</p> <p><b>Freedom</b> 81:17</p> <p><b>Friday</b> 27:3</p> <p><b>front</b> 62:7 96:19</p> <p><b>frontload</b> 96:19</p> <p><b>fulfill</b> 15:14</p> <p><b>full</b> 7:17 8:4 15:18,20 16:3 27:17 32:22 33:7 75:1 78:4 82:14,17 83:8,13,17 84:12 88:9 92:20</p> <p><b>fuller</b> 83:12</p> <p><b>fully</b> 6:20 13:3 27:16,22 28:8 66:10 71:14 85:9</p> <p><b>function</b> 90:20 92:17</p> <p><b>functions</b> 15:7,8 96:20 97:15,19</p> <p><b>fund</b> 6:20 7:15 8:13 41:6,8 43:6,7,22 44:6,8,9,15 45:1 72:20,21 85:9</p> <p><b>funded</b> 18:10 27:16,22 28:7,8 76:9</p> <p><b>funding</b> 7:17 8:4 11:21 13:3 16:3 18:22 19:2,9,10,14,16 28:5,6 30:9,18 33:6,7,9 42:7</p>
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Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>44:14 53:13,16 55:8 56:5 58:17 65:16 71:2 74:17 75:1 76:13,19 78:5 79:1 80:9 82:15,17 83:13,17 84:9,13,17,20 85:8 88:9 89:4 91:8 92:19</p> <p><b>funds</b> 11:19 19:7 40:19 41:7 42:14,16 44:10,12 45:10 59:21 66:13 70:10 74:3,8 92:6 94:20</p> <p><b>future</b> 26:15 29:20 37:8 39:6 41:13 56:8 59:1,4</p> <p><b>FY</b> 18:10,11,12,13</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gains</b> 41:3</p> <p><b>game</b> 73:8</p> <p><b>gap</b> 84:18 86:1</p> <p><b>Garcia</b> 2:11 31:16,18 33:22 34:6 36:7 43:13 91:13 101:14</p> <p><b>Gateway</b> 1:9</p> <p><b>General</b> 44:10</p> <p><b>generally</b> 53:16</p> <p><b>generate</b> 43:16 83:3 84:8 87:14</p> <p><b>generated</b> 99:1 103:6</p> <p><b>generates</b> 68:8</p> <p><b>gentlemen</b> 12:22</p>	<p><b>Geoff</b> 43:10 55:16,19</p> <p><b>Geoffrey</b> 58:5</p> <p><b>getting</b> 14:6,11 24:5 35:5 36:4 37:5 44:17 58:16 60:19 74:15 78:11,12 82:16 83:17 84:16 91:21 96:9</p> <p><b>gigantic</b> 34:18</p> <p><b>given</b> 19:11 32:13,14 39:22 81:6 82:13 104:9</p> <p><b>giving</b> 15:16,18,19 21:6 58:8</p> <p><b>glad</b> 13:13,21 15:19 50:11</p> <p><b>globally</b> 67:17,19</p> <p><b>goal</b> 45:11</p> <p><b>God</b> 91:1</p> <p><b>Goldberg</b> 14:4</p> <p><b>gone</b> 24:2 85:22</p> <p><b>governance</b> 9:18 14:17 15:1 19:14 56:15 77:9,12 92:13 94:17 102:21</p> <p><b>government</b> 14:6 37:18,19 44:22 47:19,20 53:7,10 81:12,14 86:16 87:9,11,15 91:22 94:12,21 96:20</p> <p><b>government-</b> <b>instituted</b> 49:7</p> <p><b>governments</b> 79:12</p> <p><b>governor</b> 62:10</p>	<p>71:17 93:16</p> <p><b>grant</b> 84:9 86:9</p> <p><b>grateful</b> 10:20 101:6</p> <p><b>great</b> 6:19 8:18 13:10 31:6 35:15 37:4 42:8 45:14,17,21 46:2 48:2 90:1 103:8</p> <p><b>greater</b> 30:17 61:4 68:13 80:8 94:18</p> <p><b>greatly</b> 47:13</p> <p><b>ground</b> 58:12</p> <p><b>group</b> 30:15 35:4 36:16 94:8</p> <p><b>groups</b> 21:2</p> <p><b>guarantee</b> 101:1</p> <p><b>guarantees</b> 37:9</p> <p><b>guess</b> 32:9 97:3</p> <p><b>guessing</b> 44:1</p> <p><b>guys</b> 90:13</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>half</b> 5:14,18 22:22 52:5,6</p> <p><b>handle</b> 83:9 93:4</p> <p><b>handouts</b> 8:9</p> <p><b>Hanky</b> 2:6 5:3 12:19 17:4,12,16 22:15</p> <p><b>Hansen's</b> 44:20</p> <p><b>Hanvey</b> 2:7 3:8 5:4 16:21 23:2 52:11,16,20,21 72:3,8,9</p> <p><b>happen</b> 8:8 9:13 37:9 39:7 41:2,12 56:3,4</p>	<p>101:2</p> <p><b>happened</b> 42:10</p> <p><b>happens</b> 89:2</p> <p><b>happy</b> 37:3 40:5,11 42:11 45:9 71:3</p> <p><b>hard</b> 29:3 60:8 67:12 90:7 91:4</p> <p><b>harder</b> 102:15</p> <p><b>harm</b> 97:17</p> <p><b>haven't</b> 15:18 24:10 41:11 49:22 83:16 88:8 93:22</p> <p><b>having</b> 15:5 27:12 28:15 33:1 39:15 50:22 56:7 58:13 67:1,3,5 78:10 79:16 93:19</p> <p><b>head</b> 31:20 72:13 74:12 90:17</p> <p><b>health</b> 7:10,13,15 20:16 22:18 23:1,8 26:5,7,8 52:4 57:12,15 59:18 60:20 61:2,10 70:10</p> <p><b>hear</b> 11:7,9 12:4 17:7,10 22:16 23:1 37:4 38:4 90:8,9,11</p> <p><b>heard</b> 14:4 24:2,7 25:17 27:8 40:14 46:6 48:3 49:22 60:11 81:10 95:22 100:2,6,8</p> <p><b>hearing</b> 6:16 12:11 16:19,20 21:14 22:12 86:19 104:3</p>
---	---	--	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>heavily</b> 77:14,18 102:20</p> <p><b>Held</b> 1:9</p> <p><b>he'll</b> 12:18</p> <p><b>help</b> 16:16,17 18:19 22:7 51:18 63:4 100:22 102:22</p> <p><b>helped</b> 20:6 30:2</p> <p><b>helpful</b> 18:9 22:1 48:1 68:15 102:13</p> <p><b>helping</b> 20:8 60:21</p> <p><b>helps</b> 57:3</p> <p><b>hereby</b> 104:3 105:2</p> <p><b>here's</b> 8:17</p> <p><b>hereto</b> 104:14</p> <p><b>he's</b> 61:15 75:14</p> <p><b>HHS</b> 50:14 53:18 63:20</p> <p><b>Highway</b> 1:10</p> <p><b>Hines</b> 1:17 104:2,20</p> <p><b>historic</b> 13:1</p> <p><b>history</b> 13:2</p> <p><b>hold</b> 39:18 55:19 65:2 81:8</p> <p><b>holding</b> 84:19</p> <p><b>holds</b> 68:2</p> <p><b>hole</b> 85:4</p> <p><b>hone</b> 30:2</p> <p><b>honed</b> 24:20</p> <p><b>honesty</b> 91:2</p> <p><b>HONORABLE</b> 2:4</p>	<p><b>Hoover</b> 2:20 89:8</p> <p><b>hope</b> 41:10 42:2 44:19 92:22 93:3,19</p> <p><b>hopefully</b> 21:6 22:6 91:6 93:21 103:6</p> <p><b>hoping</b> 20:4 41:16 42:5 95:4</p> <p><b>horrible</b> 86:2</p> <p><b>hotel</b> 27:3</p> <p><b>House</b> 8:15 49:13 65:19 66:1,7</p> <p><b>huge</b> 66:1</p> <p><b>human</b> 57:12 91:3</p> <p><b>hurting</b> 85:1 93:15</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p><b>IBC</b> 53:22</p> <p><b>I'd</b> 35:3 37:3 39:5 49:15 59:17 99:11</p> <p><b>idea</b> 24:1 26:18,22 27:15,21 29:16 30:21 31:1 56:22 58:6 66:8,9</p> <p><b>ideas</b> 11:7 18:6 75:21 102:13 103:5</p> <p><b>identified</b> 20:1,20 21:15</p> <p><b>identifies</b> 97:3</p> <p><b>identifying</b> 20:8</p> <p><b>IHS</b> 4:18,22 5:13,14,15 6:22 8:2 9:17 17:2 24:8,9 25:2 30:7 35:6,7 37:10 40:11,16,21</p>	<p>50:15 52:1 53:1 54:16,22 55:13 56:12 57:19 58:8 59:11 67:11,20 70:1 71:4 72:12,18,20 73:2,4,12 74:3 83:8 86:12 88:11,12 91:8 96:15 98:17,22 99:2 102:20</p> <p><b>III</b> 98:21</p> <p><b>I'll</b> 30:3 33:3 48:17 52:3 67:9 72:6 87:17 95:6</p> <p><b>I'm</b> 10:20 13:13,20 15:19 17:4,17 22:20,22 23:6,9,13 24:8 31:19 36:10 37:3,12,14,20 38:3,6 40:9 42:22 44:7 45:2,17 47:6 50:11 52:20 53:21 55:2 57:8 62:3,10 65:11 69:19 70:20,21 71:17,18 80:21 88:2,15,19 90:18 103:11</p> <p><b>image</b> 90:22 91:2</p> <p><b>immediately</b> 29:9 100:11</p> <p><b>impact</b> 9:10 41:18,21 60:5,15 61:6 71:12</p> <p><b>impacts</b> 60:10</p> <p><b>impedes</b> 77:17</p> <p><b>implement</b> 34:10</p> <p><b>implemented</b></p>	<p>69:13</p> <p><b>implementing</b> 56:14</p> <p><b>importance</b> 47:9 48:5 61:8</p> <p><b>important</b> 17:3 49:8 61:9,10 66:9</p> <p><b>impossible</b> 29:4 83:5</p> <p><b>impression</b> 40:21</p> <p><b>improve</b> 24:16,17</p> <p><b>improvements</b> 101:3</p> <p><b>inaudible</b> 18:14 23:21 25:14,20 28:11 29:7 34:20 37:1,16 43:8 49:6 54:16 57:10,15 59:6,12 65:10,22 66:14 67:9,22 68:21 73:17 74:11 86:9,16,18 87:4,19 88:19,22 89:5,16 93:10 96:8 99:2</p> <p><b>inception</b> 76:8</p> <p><b>include</b> 7:11</p> <p><b>included</b> 33:1 40:16</p> <p><b>includes</b> 17:20 18:21 20:11</p> <p><b>including</b> 21:16</p> <p><b>inclusive</b> 30:8</p> <p><b>income</b> 81:13</p> <p><b>inconsistencies</b> 82:8</p> <p><b>increase</b> 7:14,22</p>
--	--	---	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>19:7 58:9,14 60:17 61:3 <b>increases</b> 59:3 60:19 64:13 74:8 <b>increasing</b> 13:12 <b>Indian</b> 7:9,13 17:18 19:12 20:16 22:17 23:1,8 26:5,7 57:14 59:18 60:20 61:2,10 64:10 69:4 70:10 101:20 <b>Indians</b> 43:4 <b>indicator</b> 87:12 <b>indirect</b> 32:2 33:4,5,8 36:10 44:22 48:7 50:12,16 66:18,19 67:2,4,6 84:7 87:4 <b>individual</b> 46:8 <b>inflation</b> 25:19,20 26:2 28:21 57:20 59:11 <b>information</b> 20:20 22:12 25:12 35:21 39:4,19 47:7 75:8 81:13,17,22 <b>input</b> 12:8 56:2 76:3 102:10 103:2 <b>instance</b> 67:20 <b>instituted</b> 11:18 <b>instructions</b> 16:6 <b>insulting</b> 82:3 85:6 <b>interest</b> 48:13</p>	<p>97:16 <b>interested</b> 6:16 12:3 16:19 97:12 104:15 <b>Interior</b> 1:13 4:18 5:1 8:15 14:10 18:3 19:3 20:1,22 26:6 50:13 51:2 53:8 54:3 63:19 79:3 98:17,22 <b>intermediate</b> 24:14 <b>internal</b> 48:20 <b>internally</b> 100:14 <b>interpreted</b> 44:11 <b>interviewed</b> 89:17 <b>introduce</b> 12:19 31:10,12,14 52:18 <b>investigating</b> 44:1 <b>invitation</b> 95:4 <b>invite</b> 6:8 23:6 <b>involved</b> 54:19 92:18 <b>ISDA</b> 85:19 <b>ISDEAA</b> 28:5 <b>issue</b> 9:9 41:5,18 44:6 47:2,3 52:1 57:19 58:4 78:3 82:14 85:7,12 93:11 <b>issues</b> 5:15 17:3 20:9 30:3 50:21 75:17 78:17 80:17 91:15 92:10,22 <b>item</b> 65:14</p>	<p><b>items</b> 78:8 <b>it's</b> 8:21 10:4,19 13:10,16 14:14,19,20 16:12 18:15 24:2 27:9,21 28:4 29:13,15 31:21 32:9,10,11 33:10,13 34:6,9,19,21 35:1,7,16 36:9 37:4,11 44:14 47:7 49:7,20 50:19 51:3,11,14,22 54:6 55:13 56:1 61:14 63:18 66:8,9 68:9,16 74:7 75:19 81:17,18,21 82:2 83:2,14,15,22 84:22 88:5 91:4 94:8 95:12 97:6,7 99:6 <b>I've</b> 15:3 17:21 52:22 59:1 60:11 79:3 88:4 93:15 95:15,22 100:6,8 102:1 <hr/><b>J</b><hr/><b>James</b> 16:22 75:14 <b>Jamestown</b> 55:5 96:7 <b>January</b> 70:1,9 <b>Jefferson</b> 1:10 2:17 62:5,10 64:22 65:3 69:6 <b>Jemez</b> 43:5 <b>Jennifer</b> 55:20 <b>job</b> 43:11 77:13,18</p>	<p>90:1 <b>jobs</b> 15:10 90:5 <b>Jody</b> 57:17 <b>Joe</b> 2:11 31:18 91:13 96:3 <b>joint</b> 24:2 <b>jointly</b> 20:15 <b>Joseph</b> 2:16 57:10,11 101:18 <b>Jr</b> 2:16 57:11 <b>Judge</b> 44:20 <b>judgment</b> 41:6,8 44:6,8,9,15 45:1 <b>judgments</b> 45:1 <b>July</b> 93:3 <b>June</b> 20:18 <b>justice</b> 91:2 <b>justifying</b> 28:17 <hr/><b>K</b><hr/><b>KAREN</b> 105:2,14 <b>Keel</b> 2:17 62:6,9,10 69:6 71:17 <b>Kevin</b> 2:8 4:22 12:18 67:11 <b>key</b> 53:19 <b>kindness</b> 91:2 <b>kinds</b> 61:19 <b>knocking</b> 44:8 <b>known</b> 32:14,15,16 34:11 <hr/><b>L</b><hr/><b>Ladies</b> 12:22</p>
---	--	--	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>land-based</b> 48:5  <b>language</b> 8:8,16  16:9 66:10  <b>large</b> 48:5 98:6  <b>larger</b> 57:2  <b>largest</b> 53:16  <b>last</b> 6:18 8:19  11:12 34:7 39:15  43:19 45:19 46:4  48:2,17,19 58:10  59:1 68:12 70:12  81:4 93:13  <b>later</b> 24:9 26:11  <b>Laughter</b> 13:18  23:21 40:3 62:8  65:8 80:15  101:13  <b>law</b> 41:6 42:3 52:3  81:16 83:21  89:15 90:10 99:7  <b>lawyers</b> 13:8  <b>leader</b> 62:3  <b>leaders</b> 13:8 97:11  <b>leadership</b> 4:17  10:22 56:3 66:16  68:10 75:16  <b>learn</b> 8:20 90:21  91:1  <b>learning</b> 39:16  <b>least</b> 13:14 15:20  54:20  <b>leave</b> 51:21 79:9  83:10  <b>legally</b> 82:12  <b>legislated</b> 55:14  <b>legitimate</b> 54:6  77:11 78:6</p>	<p><b>lends</b> 26:13 76:1  <b>length</b> 47:22  <b>lent</b> 40:20  <b>let's</b> 35:4 36:16  64:17 69:7  95:16,20 103:9  <b>letter</b> 20:1  55:10,16 81:9  87:14  <b>level</b> 91:20  <b>liaison</b> 92:13  <b>lib</b> 6:7  <b>Lieutenant</b> 62:10  71:17  <b>lifetime</b> 31:19  <b>light</b> 74:22  <b>limit</b> 9:12  <b>limitation</b> 7:12  <b>limiting</b> 98:15  <b>limits</b> 26:10 48:4  <b>Linda</b> 2:13 40:7  <b>line</b> 33:18 96:17  <b>listen</b> 100:4  <b>listening</b> 9:16 94:5  103:4  <b>little</b> 4:10 5:16 7:9  10:1 17:5,6  18:4,20 29:10  96:22 102:15  <b>lives</b> 60:2  <b>Lloyd</b> 2:18 52:12  57:9 62:2,7  65:1,3,10 69:1  81:6 96:22 97:8  <b>load</b> 68:1,9  <b>location</b> 32:5</p>	<p><b>logic</b> 61:11  <b>long</b> 7:6 11:7 13:9  43:2 46:2 56:10  69:10,17 89:19  101:8  <b>longer</b> 26:6 27:13  28:4 29:14 30:3  76:9  <b>longer-term</b> 24:13  <b>long-term</b> 6:14  8:11 10:7 12:12  24:14 30:17  35:11 41:19 44:3  61:8 69:12 71:9  75:2 80:8  <b>lose</b> 82:15  <b>losing</b> 58:12 90:5  94:2  <b>lost</b> 85:2  <b>lot</b> 10:6 13:6 16:20  28:12 35:1 43:18  51:18 56:2 80:17  89:3 91:5 94:2  100:2  <b>lots</b> 70:4  <b>lower</b> 78:16  <b>lucky</b> 59:2  <b>Lynn</b> 2:4 4:12  10:22  <hr style="width: 20%; margin: 0 auto;"/> M  <hr style="width: 20%; margin: 0 auto;"/> <b>Mackey</b> 16:22  75:14  <b>magically</b> 83:3  <b>main</b> 58:22  <b>major</b> 24:3  <b>Malerba</b> 2:4 6:1  10:22 22:15  31:6,12,17 35:13</p>	<p>36:19,21 39:9  42:20 45:7,9,15  52:13 55:1 57:8  59:13 62:2 64:21  69:1 71:19  <b>mandated</b> 49:12  <b>mandatory</b> 10:3,8  12:3 30:20 31:4  55:8,12 56:5  58:3,4 59:15,16  60:11 61:13  65:16 66:13  80:10  <b>manifestations</b>  91:1  <b>March</b> 9:16 20:14  <b>Mark</b> 2:20 89:8  <b>Marks</b> 96:9  <b>Marriott</b> 1:9  <b>Mason</b> 2:19 88:2  89:6  <b>math</b> 68:9,10  <b>matter</b> 34:9 35:7  94:15 96:8 99:9  <b>Maxim</b> 2:15  45:16,17 51:19  <b>may</b> 1:7  24:13,14,15 31:1  41:3 67:13 69:2  75:4 92:10  105:14  <b>maybe</b> 6:3,5 27:18  34:14 50:22 58:8  82:22 83:21  87:13 90:17  102:2  <b>mean</b> 34:21 44:12  47:5,17 50:14  52:14 85:18  87:6,7,9,10</p>
--	--	---	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>88:12 97:6,8 <b>means</b> 34:2 <b>mechanism</b> 73:15 <b>medical</b> 25:18,19 26:2 57:20,22 58:13 59:10 <b>meeting</b> 19:17 24:4 64:18 69:9 72:14 75:22 76:2 93:20 <b>meetings</b> 53:2 103:14 <b>meets</b> 27:2 84:3 <b>Melanie</b> 2:9 6:1,2,3,6 23:6 <b>member</b> 40:10 <b>members</b> 11:16,17 25:1 50:20 51:1 72:15 77:1 <b>mention</b> 50:10 75:10 81:3 85:7,8,11 86:8 <b>mentioned</b> 57:17 63:17 65:14 68:11 96:9 97:1 <b>message</b> 55:6 <b>met</b> 9:17,18 19:18,20 72:10 <b>methodologies</b> 52:8 <b>methodology</b> 54:15 <b>Mexico</b> 19:19 91:14 93:7 <b>microphone</b> 23:11 <b>middle</b> 20:10 90:12 <b>Miller</b> 2:18 65:10</p>	<p>67:8 96:22 <b>million</b> 7:22 8:2 19:5,6,7 37:11 60:17 61:3 66:6 68:5 88:13,18,19 <b>mind</b> 52:19 65:20 <b>mini</b> 78:9,18 <b>minimize</b> 9:10 <b>minimum</b> 48:20 <b>minus</b> 34:13,15 95:18 <b>minute</b> 87:1 <b>minutes</b> 103:16 <b>missing</b> 53:20 68:14 <b>Mississippi</b> 43:4 <b>moderating</b> 4:13 72:5 <b>MODERATOR</b> 2:3,4 <b>modify</b> 56:19 <b>moment</b> 13:1 <b>money</b> 14:6,11 15:3,9 19:11,12 26:8,14 37:7 38:8 42:9 47:19 48:4,14 49:2,14 52:6 58:19 61:18 62:15 74:6,19 81:21 84:6,22 85:20 86:21,22 87:6,10,11,15 89:1 96:11,18,19 <b>month</b> 41:9 42:14 46:12 <b>months</b> 11:12 36:12 46:6,9,17,18</p>	<p>47:19 49:21 <b>morning</b> 40:15 43:9 57:17 101:11 <b>move</b> 7:20 58:13 64:8 69:4 72:1 83:7,12 91:7 <b>moved</b> 4:4 83:16 <b>movie</b> 6:15 <b>moving</b> 4:5 6:17 12:14 56:13 <b>multi</b> 30:14 <b>multiplied</b> 32:18,19 66:5 <b>multiply</b> 67:21 <b>multitask</b> 49:5 <b>multi-year</b> 57:1 80:5 <b>municipalities</b> 67:3 <b>muster</b> 86:6 <b>myself</b> 44:2 89:11 90:11,18 <hr/><b>N</b><hr/><b>N.W</b> 1:14 <b>NAHASDA</b> 76:19 <b>narrow</b> 54:8 <b>Nation</b> 52:22 62:11 <b>national</b> 1:13 53:9,21 57:15 58:7 65:12 66:20 79:4 <b>natives</b> 38:1 <b>nature</b> 27:7 <b>NBC</b> 53:9,22</p>	<p><b>NCAI</b> 9:16 20:14,17 <b>negotiate</b> 25:1 53:11 56:21 73:13,15 79:9 98:16,19,20 99:3 <b>negotiated</b> 53:7 57:2 <b>negotiating</b> 46:2 70:16 78:12 82:17 92:19 <b>negotiation</b> 21:20 46:16 66:19 73:13 83:8 86:18 87:13 <b>negotiations</b> 53:5 79:5 86:10,12 93:2 <b>negotiators</b> 54:12 <b>neither</b> 104:10 <b>newer</b> 73:8 92:9 <b>news</b> 6:22 <b>nice</b> 36:5 <b>Nick</b> 77:12 <b>ninety</b> 49:11 <b>nobody</b> 42:2 86:1 103:4 <b>nobody's</b> 40:4 41:10 <b>noncontrol</b> 94:11 <b>none</b> 27:1 47:18 90:15 <b>nonmedical</b> 58:1 <b>non-negotiable</b> 49:3 <b>nor</b> 104:10,14 <b>Northwest</b> 57:14</p>
---	---	--	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>notes</b> 72:13 105:5  <b>nothing</b> 32:11,17  47:21 81:10  <b>notice</b> 29:10,14  <b>notification</b> 10:13  <b>notified</b> 46:7  <b>notion</b> 43:6 81:22  98:15  <b>nudge</b> 50:1  <b>number's</b> 59:5  <b>numerous</b> 93:8  <b>nurses</b> 15:5</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>Obama</b> 100:18  <b>obey</b> 86:5  <b>obligations</b> 79:1  97:16  <b>obstacle</b> 13:14  14:22 81:4  <b>obstacles</b> 13:11  <b>obtain</b> 32:20  <b>occurred</b> 72:4  <b>October</b> 48:8  93:12  <b>offer</b> 49:22  <b>offered</b> 71:20  <b>office</b> 17:17 19:13  44:11 68:18  73:20 77:4,9  89:22 92:2,13  <b>officers</b> 15:4  <b>offices</b> 19:13  <b>official</b> 75:21  <b>oftentimes</b> 48:12  <b>Oglala</b> 37:2 88:3,7</p>	<p><b>oh</b> 6:2 52:12,14  <b>Ohkay</b> 31:19  35:10 91:13,16  92:9  <b>okay</b> 6:5 12:17  31:18 33:14  36:22 42:6 75:6  80:18 87:16,18  103:9  <b>old</b> 53:22 66:8  83:3 97:1  <b>older</b> 83:5  <b>OMB</b> 25:20 26:1  48:19,22  53:6,11,20 57:19  59:10 97:1  101:19 102:2  <b>one-on-one</b> 40:14  <b>ones</b> 70:15,16  <b>one-sheet</b> 72:15  <b>one-year</b> 72:20  <b>ongoing</b> 86:10  <b>open</b> 22:18 23:3  31:7 75:19 76:1  80:18 83:7  <b>opening</b> 3:3 4:21  5:1,9,11 6:9,10  <b>operate</b> 63:6 79:14  <b>operated</b> 85:1  <b>operating</b> 7:21  25:3  <b>operations</b> 40:8  79:15  <b>opportunities</b>  102:19  <b>opportunity</b> 21:7  22:11 23:12,15  103:2</p>	<p><b>option</b> 10:7,9 55:8  56:20  <b>options</b> 13:17  99:10  <b>order</b> 23:11 24:6  32:19 54:10  55:11 74:16 99:6  <b>originally</b> 83:15  <b>origination</b> 94:20  <b>Ortiz</b> 2:6 3:5  17:4,14,15,16  <b>others</b> 50:2 76:3  <b>otherwise</b> 81:15  82:9 104:15  <b>outcome</b> 104:15  <b>overall</b> 57:3  <b>overcome</b> 13:13  <b>overfunded</b> 87:5,7  <b>overpaid</b> 86:20  87:1  <b>oversee</b> 17:19  <b>owe</b> 86:20 87:6  <b>owed</b> 86:15  <b>owes</b> 87:10,11  88:12  <b>Owingeh</b> 31:19  35:10 91:14,16  92:9  <b>owned</b> 94:9</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> 4:1 103:20  <b>Page</b> 3:2  <b>paid</b> 18:18 33:16  47:5 48:14 57:21  71:6  <b>painful</b> 74:4</p>	<p><b>panel</b> 86:11  <b>panelists</b> 2:2 40:16  <b>paper</b> 25:22  <b>pardon</b> 53:21  77:22  <b>parity</b> 38:10,14,18  <b>Park</b> 1:13  <b>partially</b> 54:21  <b>participate</b> 21:7  101:8  <b>participated</b> 55:9  <b>particular</b> 47:17  65:14 67:13  98:22  <b>particularly</b> 67:10  <b>parties</b> 46:14  104:11,14  <b>party</b> 81:13  <b>Paso</b> 40:9  <b>pass</b> 86:6  <b>passed</b> 7:10  <b>passive</b> 45:4  <b>pass-throughs</b>  25:5,10,13  <b>past</b> 4:12 18:2  41:15 71:1 82:21  96:13  <b>patient</b> 103:18  <b>Patty</b> 2:15  45:15,17 96:8  <b>pay</b> 41:7 42:2,4  44:9 45:3 73:19  82:20 83:2 85:20  86:22 89:1  <b>payback</b> 44:15  <b>payment</b> 24:5,7  74:15 85:12,16</p>
---	---	--	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>87:3</p> <p><b>payments</b> 24:10 65:21 70:11,15</p> <p><b>pending</b> 34:4 71:9</p> <p><b>people</b> 13:6 16:22 17:2 24:9 36:17 61:21 63:3,14 65:20 85:22 86:3 89:17,20,21 90:5,8,10,14,15, 16 91:7 94:2</p> <p><b>percent</b> 18:11,12,13 37:5 39:22 43:15,16,19 49:11 67:21,22 68:2 73:18 76:8 82:18,19 83:6,10,13,17 84:16 88:17 89:4 98:5,7</p> <p><b>percentage</b> 32:13,16 33:6,19 49:2 57:2</p> <p><b>perform</b> 38:7</p> <p><b>period</b> 28:20 47:12 68:1</p> <p><b>permanent</b> 43:6,7,21 56:7</p> <p><b>permit</b> 45:2</p> <p><b>permitted</b> 84:19</p> <p><b>persist</b> 92:15</p> <p><b>personally</b> 35:3 90:18</p> <p><b>personnel</b> 93:4</p> <p><b>perspective</b> 97:20</p> <p><b>ph</b> 70:17</p> <p><b>phone</b> 54:4</p>	<p><b>pick</b> 84:14</p> <p><b>picture</b> 51:6 83:12</p> <p><b>pictures</b> 55:21</p> <p><b>Picuris</b> 93:6</p> <p><b>places</b> 100:10</p> <p><b>plainly</b> 35:18</p> <p><b>Plains</b> 45:18,21 46:2 48:3</p> <p><b>plan</b> 7:21 15:22 18:6 20:11 30:7 75:3</p> <p><b>planned</b> 17:9</p> <p><b>planning</b> 4:20 9:1 12:6 20:17,22 29:17</p> <p><b>play</b> 59:5</p> <p><b>players</b> 53:19 54:1</p> <p><b>please</b> 17:12 23:12 31:12,13 49:18 84:12 100:22</p> <p><b>plug</b> 36:14</p> <p><b>plus</b> 32:14,15 34:13,14 95:18</p> <p><b>point</b> 10:4 32:7 34:4 35:22 42:6 46:7 48:17 52:10 56:17 61:20 72:19 73:4 88:12 93:1 95:13,14 96:21</p> <p><b>points</b> 95:22 98:12</p> <p><b>police</b> 15:4</p> <p><b>policies</b> 56:19</p> <p><b>policy</b> 10:12 18:19 20:7 22:3 27:5,12,14,20 29:7 56:18 72:21 73:3,5,6 96:10</p>	<p>97:22 99:9</p> <p><b>political</b> 56:2</p> <p><b>pool</b> 18:21,22 19:1,4,5,6,9 27:8,9</p> <p><b>pools</b> 18:21</p> <p><b>Portland</b> 57:14</p> <p><b>position</b> 25:9,22 44:19 66:12 76:11</p> <p><b>possibility</b> 78:14</p> <p><b>possible</b> 43:13 69:11 103:13</p> <p><b>post</b> 55:20</p> <p><b>posted</b> 55:21</p> <p><b>potential</b> 35:10</p> <p><b>potentially</b> 10:3 12:6</p> <p><b>pots</b> 61:18</p> <p><b>practical</b> 47:21</p> <p><b>practically</b> 46:22</p> <p><b>practice</b> 41:8</p> <p><b>practices</b> 73:6</p> <p><b>pre-award</b> 11:13 18:22 70:2</p> <p><b>precisely</b> 66:15</p> <p><b>predict</b> 9:5 29:4 41:20 60:21 67:16 71:10</p> <p><b>predictable</b> 8:12 9:5 10:12 21:18</p> <p><b>predicted</b> 29:20</p> <p><b>premise</b> 54:13 79:10</p> <p><b>premises</b> 79:12</p> <p><b>premiums</b> 54:18</p>	<p><b>prepared</b> 6:6</p> <p><b>preparing</b> 73:9</p> <p><b>present</b> 23:2,15 95:5</p> <p><b>Presentation</b> 3:4,5,6,8 12:21 17:14 23:17 72:8</p> <p><b>presented</b> 5:11 30:22</p> <p><b>President</b> 37:2 56:6</p> <p><b>President's</b> 69:17 84:5</p> <p><b>prevents</b> 68:18 81:12</p> <p><b>previously</b> 74:21</p> <p><b>primarily</b> 74:14 76:10 79:10 93:10</p> <p><b>primary</b> 93:22</p> <p><b>prior</b> 79:1</p> <p><b>priorities</b> 7:15 8:1,4</p> <p><b>priority</b> 14:13 24:5 74:18</p> <p><b>probably</b> 14:3 23:19 38:4 92:15 95:7 100:9</p> <p><b>problem</b> 16:15 40:1 44:18 68:17 84:10,12 85:17 92:15</p> <p><b>problems</b> 43:12 88:6 91:19 92:11</p> <p><b>procedure</b> 25:3</p> <p><b>procedures</b> 25:6</p> <p><b>proceeding</b> 105:4,5,8</p>
--	--	---	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<b>proceedings</b> 103:19	98:4	<b>putting</b> 41:16 61:16 62:6,17	34:2 46:2 47:22 48:13,15 49:12 50:11,12,13,14,1 5 51:3,8 54:7,8 56:22 58:1 59:11 78:22 79:7,8 98:10,19 99:1,3,4
<b>process</b> 4:13 18:14 19:3 21:5,7,20 22:16 24:17 47:5 57:7 66:18,20 75:11 89:18 90:2 92:5,20 103:1	<b>pros</b> 30:14 80:5	<hr/> <b>Q</b> <hr/>	<b>rate's</b> 67:14
<b>processes</b> 22:8 74:4 101:4	<b>protected</b> 81:18 82:12	<b>Q&amp;A</b> 72:5	<b>rather</b> 15:3
<b>processing</b> 85:12	<b>protects</b> 61:18	<b>qualified</b> 84:4	<b>re</b> 82:3
<b>productive</b> 70:6	<b>protocol</b> 62:3	<b>qualify</b> 83:22	<b>reach</b> 96:14
<b>program</b> 74:2 92:21	<b>provide</b> 6:3 25:15 56:20 59:17 77:14,15,19	<b>quarter</b> 48:8	<b>reached</b> 46:14
<b>programs</b> 14:3,15 44:14 47:15 52:2,5 54:16 55:13 56:16 79:14 84:15 89:2	<b>provided</b> 93:9,18 94:7	<b>question</b> 31:3,21,22 59:7	<b>readily</b> 76:20
<b>progress</b> 6:19 7:1 36:4 70:20,22 71:5 100:10	<b>providing</b> 22:1	<b>questions</b> 17:8 21:15 22:5 29:21 30:5 79:20,22	<b>ready</b> 46:22
<b>project</b> 27:19 30:7	<b>provision</b> 78:21	<b>quick</b> 39:11 72:3	<b>real</b> 14:22 33:14 59:3
<b>projecting</b> 30:8 67:8,10	<b>provisional</b> 34:2 46:19 51:10 99:4	<b>quicker</b> 15:9 50:9	<b>realigned</b> 27:20
<b>projections</b> 28:14,15 29:6	<b>provisions</b> 75:1 78:2	<b>quickly</b> 24:21 102:9 103:13	<b>realize</b> 31:1 37:17 38:2 64:4
<b>promise</b> 82:6	<b>PSA</b> 98:21	<b>quiet</b> 42:2	<b>really</b> 7:4 8:14,17 9:20 12:11 13:13,20 16:8 21:14 26:10 28:3,5 34:14,21 37:12 38:12 39:11,20 42:15 44:2,18 45:11 48:15 51:11 56:10 58:10,18 59:2,10 60:14 63:21 64:9 70:21 71:8 76:1 79:6 82:4 83:11 84:2 85:1,3 86:2,14 90:7,9,10,12 93:3 95:2,17 98:16 101:6,21 102:11
<b>promised</b> 31:8	<b>public</b> 2:10 3:7 31:5 81:21	<b>quite</b> 8:2 56:5	<b>reason</b> 7:7 58:6
<b>prompt</b> 68:14	<b>Pueblo</b> 40:9 43:4,5 89:16 93:6	<hr/> <b>R</b> <hr/>	
<b>proposal</b> 12:3 26:19 59:16 60:7,12 61:22 65:15	<b>pueblos</b> 93:6	<b>raise</b> 98:15	
<b>propose</b> 34:16	<b>pull</b> 34:11 55:22 64:7	<b>raised</b> 55:7 75:17 78:4,6	
<b>proposed</b> 65:17 78:14	<b>Purchase</b> 7:16 8:5 58:15	<b>Ramah</b> 43:2 44:21 98:21	
<b>proposing</b> 36:10	<b>pure</b> 26:20	<b>rate</b> 25:19,20 26:2 28:21 33:4,5,8,16 34:3 36:11 45:22 46:5,14,16,19 47:1,11,12,20 48:13 50:16,21 51:8,14,15 53:5,7 54:13,18 57:20 66:18,19 67:2,4,6 79:5 84:7,8 87:13	
	<b>purpose</b> 7:4 71:11	<b>rates</b> 26:12 33:16	
	<b>purposes</b> 9:7 47:21 76:12,15 100:11		
	<b>pursue</b> 26:4 97:5		
	<b>push</b> 59:10		
	<b>pushed</b> 13:9		
	<b>pushing</b> 69:20		

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>81:7,10 <b>reasons</b> 82:12 <b>receive</b> 42:13 53:13 77:17 88:18 <b>received</b> 19:5,6 81:14 88:9,15 <b>recent</b> 53:2 <b>recently</b> 19:18 50:7 53:1 72:10 <b>recognize</b> 12:2 55:2 62:3 <b>recognized</b> 67:5 <b>recommend</b> 35:9 63:1 101:19 <b>recommendation</b> 78:19 95:3,14 <b>recommendations</b> 4:17 5:13,18 6:4 20:2,3 22:20 30:16 31:8 57:7 62:21 63:20 64:5 69:21 74:21,22 75:2,7 80:7 <b>recommended</b> 78:14 <b>reconciliation</b> 70:19 <b>record</b> 52:19 55:4 104:8 <b>recorded</b> 4:15 104:6 <b>recorder</b> 4:15 <b>recordings</b> 105:6 <b>recover</b> 97:18 <b>recoveries</b> 97:19 <b>recovering</b> 97:13</p>	<p><b>recurring</b> 69:8 <b>reduce</b> 79:7 84:20 <b>reduced</b> 9:14 104:7 <b>reduction</b> 8:3 <b>referenced</b> 97:8 <b>Referred</b> 7:16 8:5 58:15 <b>regard</b> 50:5 55:8 67:8 82:14 85:5 96:8 99:16 <b>regarding</b> 42:7 62:15 <b>regards</b> 11:8 53:5 73:11 74:2 <b>region</b> 78:11 91:16,20 92:4,14 93:20 <b>regional</b> 19:13 73:20 <b>regions</b> 21:2 77:3,8 <b>regulations</b> 49:12 <b>reiterate</b> 72:11 <b>related</b> 41:14 104:10 <b>relative</b> 67:16 104:13 <b>release</b> 81:13 <b>released</b> 68:19 <b>reliant</b> 77:18 <b>relies</b> 77:14 <b>relying</b> 102:20 <b>remained</b> 13:11 <b>remaining</b> 5:14 <b>remains</b> 36:8</p>	<p>94:19 <b>remanded</b> 40:22 <b>remanding</b> 16:7 <b>remarks</b> 3:3,9,10 4:21 5:1,3,9,11 6:9,10 55:7 69:3 99:16,21,22 102:8 <b>remember</b> 5:7 98:3 <b>remind</b> 56:12 <b>reminding</b> 49:8 <b>remotely</b> 99:11 <b>renegotiate</b> 47:20 <b>repay</b> 44:22 45:11 87:15 <b>repeat</b> 80:19 <b>replacement</b> 92:12 <b>report</b> 5:5 11:8 18:14 28:2,3,5,6 66:11 68:19 72:3 73:1 76:6,7,11,14,21, 22 77:22 78:2 80:14 81:5,8 84:2 85:5 86:13,21 87:2 <b>reported</b> 1:17 105:3 <b>reporter</b> 104:1,2 105:3 <b>Reporter's</b> 105:5 <b>Reporting</b> 1:17 <b>reports</b> 68:15 73:9 82:5 88:14 <b>represent</b> 37:19,20 57:14 65:12 <b>representative</b></p>	<p>86:15 <b>representatives</b> 103:12 <b>representing</b> 31:15 40:11 80:20 <b>represents</b> 43:1 <b>request</b> 8:14 27:17 84:5 100:12 <b>requested</b> 7:5 22:9 <b>requests</b> 24:19 <b>require</b> 49:13 56:2 <b>required</b> 28:4 29:10,15 41:7 44:9 <b>requirement</b> 61:4 <b>requirements</b> 67:17 <b>requires</b> 99:2 <b>requiring</b> 29:13 <b>research</b> 81:15 <b>reservations</b> 102:1 <b>resolve</b> 20:8 93:21 <b>resources</b> 15:12,17,19,20,2 2 93:15 <b>respect</b> 4:19 <b>responding</b> 20:3 <b>response</b> 59:14 96:5 99:18 <b>responsibility</b> 15:15,17 <b>rest</b> 8:3 9:10,13 41:21 60:15 70:18 71:12 <b>restructured</b> 27:15</p>
---	--	---	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>result</b> 48:21  <b>resume</b> 103:15  <b>review</b> 46:17  <b>reviewing</b> 72:17  74:16  <b>reviews</b> 46:15  <b>revisit</b> 56:18 84:2  <b>revisiting</b> 74:22  <b>rise</b> 56:16  <b>road</b> 27:19 29:18  <b>roadblock</b> 57:18  <b>Rogers</b> 2:14 42:22  80:21 98:14  <b>Ron</b> 2:3 10:22  52:11,13 55:2,4  58:5 72:4  <b>room</b> 5:4 13:7 50:6  63:3,15 86:17  <b>Ross</b> 98:3  <b>Roubideaux</b> 2:5  3:3,10 4:22  6:9,11 22:8 30:6  33:21 34:1 35:14  36:20 37:15  39:10 40:4 41:5  45:20 49:17 50:5  51:19 59:14  62:14 65:2  69:2,5 102:7,8,9  <b>round</b> 103:9  <b>R's</b> 65:9  <b>Rube</b> 14:4  <b>rule</b> 53:12  <b>ruling</b> 44:20  <b>run</b> 16:2 38:12  86:3 91:19  <b>running</b> 32:6</p>	<p style="text-align: center;"><u>S</u></p> <p><b>sad</b> 8:17 42:12  <b>sake</b> 31:22  <b>salaries</b>  82:18,19,20  83:6,10,13,18  88:17 89:2  <b>salary</b> 73:18  <b>San</b> 1:17 104:2,20  <b>save</b> 15:2  <b>saw</b> 9:11 43:11  94:7  <b>scenario</b> 51:4  <b>schedules</b> 87:5  <b>school</b>  84:3,9,15,20  <b>schools</b> 14:18  77:21 78:3,4  83:20,22 84:1,17  85:1,10  <b>score</b> 66:1  <b>second</b> 5:18 20:15  42:6 49:18 65:3  <b>Secondly</b> 74:20  83:19  <b>secret</b> 81:21  <b>secretary</b> 12:18  62:13 67:11 81:9  85:3  <b>secretary's</b> 68:18  <b>Secrets</b> 81:12,18  82:2  <b>seeing</b> 36:2 70:20  71:5 94:18  <b>seems</b> 41:2  <b>seen</b> 7:9 9:22</p>	<p>92:11 102:1  <b>sees</b> 5:7  <b>selected</b> 37:21  <b>self</b> 9:17 14:17  15:1 17:20 19:13  28:19 38:16  56:14 77:9,12  89:13 92:13  94:16 102:21  <b>self-determination</b>  29:18 56:14  <b>self-governance</b>  10:21 13:12 30:1  52:21 77:4,15,21  91:17 92:2 93:7  <b>senate</b> 8:15 16:12  66:7  <b>send</b> 21:9  <b>sense</b> 61:17 75:12  98:7  <b>sent</b> 18:16 48:3  90:21  <b>separate</b> 60:12  61:17 62:1 76:22  <b>September</b>  69:15,19 93:12  <b>sequestration</b> 59:4  <b>series</b> 24:4  <b>serious</b> 44:18  <b>seriously</b> 46:13  48:16 86:6  <b>serve</b> 94:13  <b>service</b> 1:13  7:10,14,15 20:16  26:5,7,8 38:12  59:18 60:20  61:2,10 70:10  102:22</p>	<p><b>services</b> 7:13,22  17:18 19:12  22:18 23:1,8  38:7 39:2,3  57:12 59:6,20  60:2,6 61:6,11  93:9  <b>session</b> 4:9,12,14  5:19 6:13 7:4  9:16 30:22  40:14,15 43:8  <b>sessions</b> 6:22 95:8  100:16  <b>setting</b> 31:9  <b>settlement</b> 41:15  71:4 98:21 99:1  <b>settlements</b> 7:1  71:5  <b>seven</b> 21:5 48:20  49:21 85:15,21  89:12  <b>several</b> 17:19 20:1  78:9  <b>share</b> 18:1,4 20:5  22:11 29:22  40:12 68:16  <b>shared</b> 20:20  <b>sharing</b> 18:15  39:19  <b>sheet</b> 4:3  <b>she'll</b> 23:8  <b>shocked</b> 58:18  <b>short</b> 42:1 48:11  83:14  <b>shortfall</b>  27:10,11,12,14,2  1 28:2,3  68:14,19 73:9  76:7,9,14 77:22</p>
---	--	--	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p>81:5 83:14 84:2 86:13,21 88:14 <b>shortly</b> 18:16 20:21 <b>short-term</b> 12:5 35:11 <b>showed</b> 94:9 <b>shown</b> 7:1 86:20 87:7 96:13 <b>sic</b> 96:9 <b>sight</b> 82:16 <b>sign</b> 4:7 90:1 <b>signatures</b> 49:5 85:16 89:12 <b>signed</b> 70:17 <b>significant</b> 13:11 <b>sign-in</b> 4:3 <b>similar</b> 78:16,18 <b>simple</b> 14:20 34:22 35:8 68:9,10 <b>simpler</b> 30:12 80:3 <b>simplification</b> 97:17 <b>simplified</b> 97:5 <b>simplify</b> 14:7 15:2,6 97:12 <b>simply</b> 33:17 42:15 <b>Sioux</b> 37:2 88:3,8 <b>sir</b> 89:7 <b>sit</b> 11:3 34:17 35:3 36:16 57:15 62:17 63:4,13,15 73:13 89:3 <b>sitting</b> 90:11 <b>situation</b> 8:18 16:11 27:21 28:1</p>	<p>53:17 <b>six</b> 36:12 48:19 85:15,21 <b>sizable</b> 49:2 <b>S'Klallam</b> 55:5 <b>S'klallem</b> 96:7 <b>slow</b> 13:21 <b>slower</b> 96:14 <b>small</b> 78:9,18 93:14 <b>smaller</b> 54:8 93:6 98:8,9 <b>smart</b> 63:3,14 100:5 <b>smoothly</b> 91:18 <b>snapshot</b> 86:16 87:12 <b>social</b> 15:4 <b>solution</b> 6:14 7:6 8:11 10:7 12:13 30:17 34:16 35:10 41:20 43:7,22 44:3 56:10 61:9 63:10,11 66:15 69:10,12,14,17,1 8 70:8,22 71:10 80:8 103:5 <b>solutions</b> 11:6 12:5 24:13,14,15 35:12 47:17 51:17 56:9 75:2 <b>solve</b> 16:13,16 <b>solved</b> 16:15 69:7 <b>somebody</b> 5:5 20:4 55:21 85:14 95:5,21 <b>somehow</b> 47:10</p>	<p><b>sometime</b> 93:20 <b>sorry</b> 52:20 62:2 88:12,15,19 <b>sort</b> 9:21 10:9 17:5 25:3,15 61:18 98:9 <b>sorts</b> 29:2,15 97:9 <b>soul</b> 90:14 <b>sounds</b> 6:14 67:7 91:7 <b>source</b> 53:16 <b>sources</b> 51:10 <b>southwest</b> 91:15,20 92:14 <b>speak</b> 23:12 93:5,16 101:11 <b>SPEAKER</b> 28:11 45:13 <b>SPEAKERS</b> 2:10 <b>special</b> 99:4 <b>specific</b> 11:6 20:9 30:16 80:7 <b>spend</b> 26:8 49:14 51:15 <b>spending</b> 26:4,6,17,20 47:19 <b>spirit</b> 82:10 <b>split</b> 5:14 <b>spoke</b> 100:4 <b>stabilize</b> 57:3 <b>staff</b> 50:22 <b>staffing</b> 7:16 8:5 <b>stagnant</b> 47:13 <b>stand</b> 13:1 45:4 <b>standard</b> 25:3,9</p>	<p><b>standardized</b> 73:12 <b>standards</b> 86:4 <b>start</b> 11:5 67:12 <b>started</b> 54:20 102:12 <b>starting</b> 73:4 91:7 103:6 <b>startup</b> 18:21 <b>states</b> 13:16 15:15 49:13 67:1 <b>stating</b> 35:17 <b>status</b> 19:16 <b>statute</b> 44:8 81:11,15 84:19 99:8 <b>statutes</b> 86:5 <b>staying</b> 101:8 <b>step</b> 13:22 17:4,12 <b>steps</b> 17:6 <b>stop</b> 87:17 <b>stovepiping</b> 51:22 <b>streamline</b> 21:19 <b>Street</b> 1:14 <b>Strommer</b> 43:10 55:17 58:5 <b>strongly</b> 44:2 <b>structured</b> 27:8,9 <b>stuck</b> 100:4 <b>stuff</b> 43:1 81:20 90:18 91:5 <b>subject</b> 44:15 <b>submit</b> 21:11 <b>submitted</b> 19:22 46:5 74:21</p>
---	---	---	---

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>submitting</b> 75:8</p> <p><b>substantially</b> 47:16</p> <p><b>substantiated</b> 25:12</p> <p><b>succinct</b> 23:14</p> <p><b>sue</b> 15:21 37:6,7</p> <p><b>sugarcoating</b> 88:7</p> <p><b>suggestion</b> 102:5</p> <p><b>suggestions</b> 22:19 31:8 71:21 100:7,8</p> <p><b>summarizing</b> 43:11</p> <p><b>summation</b> 32:17</p> <p><b>summations</b> 34:9</p> <p><b>summed</b> 33:6</p> <p><b>super</b> 97:2</p> <p><b>supplement</b> 84:21</p> <p><b>support</b> 1:5 4:19 5:15,22 6:13,21 7:6,12,17 8:4,6,12,20,22 9:6,13,19 11:2,20 12:13 13:3 15:11 17:21 18:3,5,10,13,17, 19 19:18,21,22 20:9 21:17,22 22:2,17 29:9 32:2,11,22 33:10,11,13,17 35:12 36:11 38:1 39:16 40:10 42:14 44:17 50:17 51:16 52:9 58:17 59:16,18 60:1,3,5,8 61:12 62:16 65:11,13,16,18,2</p>	<p>1 66:2,16 67:17 68:9 71:3,10 72:10 73:9,12,14,16,22 78:1,5 81:20 84:12 88:16 96:11,14 99:17</p> <p><b>supporting</b> 71:14</p> <p><b>supports</b> 66:10</p> <p><b>supposed</b> 42:4 61:15 88:18 93:19</p> <p><b>Sur</b> 40:9</p> <p><b>sure</b> 4:14 9:8 14:1 54:12 59:10 77:6 79:10 97:13,21 98:1 103:1</p> <p><b>Swimmer</b> 98:3</p> <p><b>switched</b> 85:13</p> <p><b>sworn</b> 104:5</p> <p><b>system</b> 14:20 42:9 46:15 85:13 86:4 94:15 96:10,16 97:5,7,12</p> <p><b>systems</b> 67:2,4,6</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p><b>table</b> 11:3 54:1,10,12 70:3 83:10 100:21</p> <p><b>taking</b> 48:16 79:16 84:15</p> <p><b>talk</b> 7:2 10:6 17:5 24:9 25:18 38:17 51:1 56:10 62:18 65:7 80:17 86:11</p> <p><b>talked</b> 10:1,18,19 11:22 29:22 46:1 50:20 54:3 55:10 58:5 62:17 79:3</p>	<p>95:6</p> <p><b>talking</b> 10:2 24:8 29:5 50:21 51:15 70:7 88:5</p> <p><b>talks</b> 85:8</p> <p><b>Taos</b> 43:5</p> <p><b>target</b> 56:13</p> <p><b>targeted</b> 51:20</p> <p><b>task</b> 5:6,7 16:8 64:16</p> <p><b>team</b> 12:19</p> <p><b>technical</b> 5:22 23:7 80:22</p> <p><b>technically</b> 59:19</p> <p><b>template</b> 87:8</p> <p><b>ten</b> 43:19 66:5 103:16</p> <p><b>term</b> 7:6 25:4 30:3 42:1 56:10 69:10,17</p> <p><b>terminate</b> 65:17</p> <p><b>terms</b> 22:16 26:11 29:18 32:21 62:2 69:5 91:21 92:5</p> <p><b>territory</b> 89:9</p> <p><b>testimony</b> 80:18 87:20 99:16 104:4,6,9</p> <p><b>thank</b> 6:12 12:15 16:21 17:11,15 22:10,15 23:16,18 35:12,13,14,17 36:5,18,19,20 37:1 39:5,8,9,10,20 40:6 42:19,20 45:6,7 49:15 50:4 55:1 57:8</p>	<p>59:13 62:4,9,13 64:20,21 68:22 69:1 71:19 80:12 89:6 91:9,11 94:4,5 96:2,3 99:12,13 100:3 101:7 102:6,10 103:2,7,8</p> <p><b>thanked</b> 58:20</p> <p><b>Thanks</b> 72:6</p> <p><b>that's</b> 4:4 5:8,21 6:19 9:4,11 13:20 14:21 17:21 19:1,2,15 21:12 23:5 25:15,21 26:19,22 29:10 32:6,14,15 34:16,22 35:15,20 36:13 39:13,18 41:1,14,22 47:1 50:12 51:6 54:21 59:7 60:8 61:5,16,22 63:21 64:19 68:8 69:19 75:5 77:4 78:6,18 81:4,13 82:22 83:2 84:4,9,10 85:6,16 86:1,14,16 87:13 88:13,20 89:4 91:3,9 92:7 94:11 95:2,19 97:20 99:5 102:12</p> <p><b>themselves</b> 31:11</p> <p><b>theoretically</b> 76:8,10</p> <p><b>theory</b> 15:20</p> <p><b>thereafter</b> 104:7</p>
--	--	--	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>there's</b> 4:3 9:9 10:5,6 16:14 26:3 29:10,21 37:9 39:12,13 40:17 50:17 61:11,17 63:19 78:3,15,21 86:1,17 87:8 92:8</p> <p><b>they'd</b> 89:21</p> <p><b>they'll</b> 93:21 102:3</p> <p><b>they're</b> 9:8 18:18 27:7 29:4,17 41:13 42:11 48:11 49:10 51:9,10 56:4 58:8 73:3 84:1,18,19 85:1,2 87:3 90:17 93:14,15,19 94:1 97:4</p> <p><b>they've</b> 64:2 93:10 94:2</p> <p><b>third</b> 56:17 91:17</p> <p><b>thoughts</b> 47:8</p> <p><b>thousand</b> 34:13</p> <p><b>Thursday</b> 27:3</p> <p><b>timeframe</b> 46:3 69:19</p> <p><b>timelines</b> 10:18 69:11</p> <p><b>timeliness</b> 47:9</p> <p><b>timely</b> 77:16 96:12 98:1</p> <p><b>timer</b> 23:9 72:6</p> <p><b>tinkered</b> 66:22</p> <p><b>today</b> 6:12,16 12:12 17:7 21:10</p>	<p>24:2 25:17 30:6,22 37:4 41:3,19 83:1 92:1 94:7</p> <p><b>tolerate</b> 66:22 67:2,5</p> <p><b>tomorrow</b> 41:4 85:6 86:11</p> <p><b>tomorrow's</b> 103:14</p> <p><b>tonight</b> 101:14</p> <p><b>top</b> 72:12 74:12</p> <p><b>topic</b> 12:10 41:19</p> <p><b>totally</b> 71:17,18</p> <p><b>toward</b> 84:7 95:3</p> <p><b>towards</b> 15:15 24:12 25:21 75:4</p> <p><b>track</b> 91:6</p> <p><b>Trade</b> 81:11,18 82:2</p> <p><b>trailer</b> 6:15</p> <p><b>training</b> 21:21</p> <p><b>transcript</b> 105:4,6</p> <p><b>transcription</b> 105:1,7</p> <p><b>Transcriptionist</b> 105:14</p> <p><b>transfer</b> 92:5</p> <p><b>transparency</b> 68:13</p> <p><b>Treasurer</b> 88:2</p> <p><b>Treasury</b> 40:17,18 44:7 45:5 85:14 86:3</p> <p><b>treated</b> 79:11</p> <p><b>treating</b> 78:17</p>	<p><b>tremendous</b> 77:13</p> <p><b>tremendously</b> 20:7</p> <p><b>tribal</b> 1:3 4:17 9:17 10:21 11:16 13:8 15:1 20:12,13,17 21:1 22:21 24:3 30:1 46:11 48:20 53:7,10,14 60:7 62:3 65:12 66:16 68:10,20 75:15 84:21 88:22 91:22 97:11 102:21 103:14</p> <p><b>tribally</b> 14:18 83:20 84:22</p> <p><b>tribe</b> 25:12 28:7 29:7,11 31:14 33:4,15 37:2 38:9 39:2 46:5,22 47:10 55:5 56:1 58:18 70:18 79:13 83:3 87:10,15 88:3,8 90:6 92:7 93:7,14 94:12 96:7</p> <p><b>tribes</b> 7:20 10:2,6 12:3 14:7,22 15:9,16 19:15 21:21 25:2 28:18,20,22 29:16 37:22 39:7 42:11 43:1 44:2 48:6,10 49:9 50:13,14 56:15,20,21 57:2 62:15 67:1,5 70:13 72:17 74:16 76:20 77:11,12,14,15,1 8 78:5,9,10,16,18</p>	<p>79:8,11 81:7 83:11 84:14 85:19 86:12,20 92:8 94:12,17 96:11,14,17,18 98:2,5,9,16,18 99:2,10 103:1</p> <p><b>tribe's</b> 14:12 67:13</p> <p><b>Tribes</b> 57:13</p> <p><b>tried</b> 75:20</p> <p><b>tries</b> 44:22</p> <p><b>true</b> 83:1 104:8 105:7</p> <p><b>trust</b> 15:14</p> <p><b>truth</b> 89:5</p> <p><b>try</b> 11:4 47:14 71:15 74:18 90:11 95:11,20 100:16 101:3 103:12,15</p> <p><b>trying</b> 17:8 23:13 34:19 40:1 41:20 47:6 71:9 75:16 90:17,19 94:6 97:12</p> <p><b>turf</b> 63:21</p> <p><b>turn</b> 73:19</p> <p><b>turned</b> 7:21</p> <p><b>turns</b> 48:12 92:3</p> <p><b>tutors</b> 101:20</p> <p><b>two-year</b> 26:16 72:20</p> <p><b>type</b> 25:9</p> <p><b>typed</b> 105:4</p> <p><b>types</b> 21:21 28:10 29:3 54:7 79:7,8 80:6</p> <p><b>typewriting</b> 104:7</p>
--	--	--	--

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><hr/><b>U</b><hr/></p> <p><b>unacceptable</b> 42:15</p> <p><b>underfunded</b> 87:5</p> <p><b>undermine</b> 98:2</p> <p><b>underscore</b> 55:6</p> <p><b>understand</b> 36:17,18 47:4 86:17 101:22 102:3</p> <p><b>understanding</b> 18:20 39:17 77:7</p> <p><b>UNIDENTIFIED</b> 28:11 45:13</p> <p><b>United</b> 13:15 15:15 49:13 67:1</p> <p><b>universities</b> 97:10</p> <p><b>unless</b> 47:10 81:15 83:3 92:16 94:21 95:20</p> <p><b>untenable</b> 16:10 66:12</p> <p><b>upcoming</b> 17:9 57:4</p> <p><b>update</b> 23:9 71:16 97:22</p> <p><b>updated</b> 22:3 34:3 78:22</p> <p><b>upon</b> 73:2</p> <p><b>upstairs</b> 68:17</p> <p><b>urge</b> 68:13 84:2</p> <p><b>utterly</b> 85:7</p>	<p>34:18 35:2,5,17,20 36:2,9 43:15</p> <p><b>various</b> 40:16 54:7 75:20 79:6 80:6</p> <p><b>vary</b> 98:10</p> <p><b>varying</b> 60:9</p> <p><b>versus</b> 53:22 58:1 94:11</p> <p><b>Veterans</b> 57:11</p> <p><b>Vickie</b> 2:7 5:4,8,20 6:5 16:21 20:4 23:2 52:14,20 55:1 72:2 80:16</p> <p><b>victim</b> 45:3</p> <p><b>victory</b> 13:10</p> <p><b>view</b> 83:20 94:11</p> <p><b>village</b> 90:14</p> <p><b>villages</b> 90:15</p> <p><b>violates</b> 82:2</p> <p><b>Virginia</b> 1:10</p> <p><b>visibility</b> 77:1</p> <p><b>vocal</b> 86:9</p>	<p><b>water</b> 81:8</p> <p><b>ways</b> 10:14 14:8 24:22 29:6 51:9</p> <p><b>website</b> 21:8 55:20,22</p> <p><b>we'd</b> 17:7</p> <p><b>week</b> 20:18 27:2 70:12 93:20</p> <p><b>we'll</b> 5:15,17 22:18 23:2,10 25:21 42:1 65:4 69:3 80:18 85:20 86:13 99:19 102:18 103:6</p> <p><b>well-established</b> 73:6</p> <p><b>we're</b> 4:10,20 5:2,10,12,13 8:22 9:1 13:21,22 15:16 16:10,16 17:8 19:8 20:10,16 21:22 22:16,21 24:12 25:13,19 27:16,21,22 28:15,16 31:17 36:4,21 37:5,6,22 38:8,12,19,20 39:5,6,16,17 40:5 41:15,22 42:3,4,16 44:16 47:16 51:21 57:18 59:9 60:20 62:18 63:5,9 64:15 65:5 69:11 70:16,17 71:21 72:1,2 76:8 82:16 83:16 84:15 86:19 88:18 91:3,4 94:17,22 95:3</p>	<p>97:4,13 100:12,13 101:6 103:4,15</p> <p><b>we've</b> 4:11,15 6:18,22 7:2 8:19 9:15,18,20 10:1,18 11:1,5 12:9,10 13:22 14:10,14,16,17,2 2 15:1,6 16:4,20 20:15 21:15 24:3,11,20 26:18 29:5 30:20 36:3 39:14 47:13 60:19 62:16,20 75:18 76:6 77:20 78:15 81:6,10,11 82:3,12 88:10,15 91:19 92:11 103:13</p> <p><b>whatever</b> 64:2 86:1,17 92:5</p> <p><b>whatnot</b> 92:20</p> <p><b>Where's</b> 6:2</p> <p><b>Whereupon</b> 103:19</p> <p><b>whether</b> 47:9 76:18 89:11</p> <p><b>Whew</b> 80:13</p> <p><b>whoever</b> 35:4 63:2</p> <p><b>whole</b> 54:13 60:12 61:16 71:2 79:10 90:3</p> <p><b>whom</b> 85:22 104:2</p> <p><b>who's</b> 46:22</p> <p><b>whose</b> 104:4</p> <p><b>willing</b> 11:2 62:20,21</p> <p><b>wind</b> 67:9</p>
<p><hr/><b>V</b><hr/></p> <p><b>vacation</b> 85:22</p> <p><b>variable</b> 32:18</p> <p><b>variables</b> 32:7,17</p>	<p><hr/><b>W</b><hr/></p> <p><b>wait</b> 70:7 87:1</p> <p><b>Washburn</b> 2:8 3:4,9 12:18,21,22 13:5,19 17:15 22:8 37:15 45:20 65:9 93:17 99:22 100:1</p> <p><b>Washington</b> 1:14 19:21</p> <p><b>wasn't</b> 25:8 89:9 90:14</p>		

Capital Reporting Company  
2014 Annual Tribal Consultation Conference 05-06-2014

<p><b>Winston</b> 13:15  <b>wisdom</b> 100:2  101:6  <b>wishing</b> 39:6  <b>witness</b> 104:4,6,9  <b>work</b> 8:10 9:4  14:15,19 16:17  18:5 20:11 35:6  37:17 43:18  49:16 57:16  58:6,13,20  59:8,11 61:21,22  62:14 70:1 71:15  72:14 75:3 82:10  95:7,11,13,16,20  96:10 98:8  <b>worked</b> 17:1,2  43:9 52:22 89:12  <b>workers</b> 15:4  <b>workgroup</b> 9:19  11:9,11,17  17:1,2 18:5  19:18,21,22  20:4,6 22:17  23:3,7 24:1,3  25:18 27:2 36:1  40:10 43:8 50:20  51:1 53:2 54:2  57:16,21 58:7  62:17 63:2 64:16  69:10,20 70:1,5  71:15 72:3,10,15  73:17 74:14  75:7,15,18  81:1,9 82:1,5  85:5 86:11  102:20  <b>workgroups</b> 53:1  69:8 81:5  <b>workgroup's</b>  80:16</p>	<p><b>working</b> 11:1,13  14:13 19:8 20:2  25:14,21,22 27:4  28:16 40:21 46:8  50:2 58:5 63:9  95:3  <b>works</b> 51:13 59:19  <b>worksheet</b> 76:15  <b>worried</b> 37:12  59:3  <b>worry</b> 56:7 58:22  60:22  <b>write</b> 35:4  <b>written</b> 21:11 32:1  95:15  <b>wrong</b> 90:12  <hr/> Y  <hr/> <b>year's</b> 34:7 44:14  60:16 70:10  <b>yet</b> 88:9  <b>you'll</b> 22:6 23:1  <b>Young</b> 65:22  <b>yourself</b> 31:13,14  52:18  <b>you've</b> 9:22 24:2  25:17 52:5 85:12  98:7  <b>Ysleta</b> 40:8  <b>YVETTE</b> 2:5  <hr/> Z  <hr/> <b>zero</b> 85:8</p>		
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