

**From:** Cory L. Hitchcock [<mailto:Cory@sonosky.net>] **On Behalf Of** Lloyd B. Miller  
**Sent:** Thursday, September 05, 2013 10:24 AM  
**Subject:** RE: NTCSC and CBCA Coalitions: FINAL Letters to Senate Appropriations Subcommittee, Senate Indian Affairs Committee and to President Obama

Dear Tribal Leaders,

Attached please find three letters regarding contract support costs. Two of the letters relate to the IHS's process for settling contract support cost claims. The third relates to the Administration's proposal to deny Tribes and tribal organizations damages if the Government fails to fully fund the Tribes' and tribal organizations' contract support cost requirement in FY 2014.

The first letter is addressed to the Senate Committee on Indian Affairs (SCIA) and was signed by 43 Tribes and tribal organizations. It requests the Committee convene an oversight hearing to address the resolution of the outstanding claims against the IHS. It notes the failure of the IHS to implement a realistic process thus far to settle the claims and urges the Committee to consider appropriate legislative solutions to the issue.

The second letter is addressed to the President and was sent by the Principal Chief of the Cherokee Nation and the Governor of the Chickasaw Nation. These two leaders met with the President last July to discuss settling these claims. Like the letter to the SCIA, this letter focuses on the failure of the IHS to develop a realistic approach to settle the claims against the agency. It calls on the President to suggest the IHS settle these claims based on the Shortfall Reports.

The third letter is addressed to the Senate Appropriations Subcommittee on the Interior, Environment, and Related Agencies, and was signed by 45 Tribes and tribal organizations. This letter calls on the Subcommittee to reject the Administration's proposal to cut off Tribes' and tribal organizations' access to damages if the Administration fails to fully fund its contract support cost requirement in FY 2014. As noted in the letter, such a course would mean that Tribes and tribal organizations would be the only government contractors that the Administration could cheat with impunity.

We believe these letters will have a profound effect due to the large numbers of co-signers. We appreciate the fast action that was required to finalize these letters in such a short amount of time and thank you all for your efforts. We also encourage any Tribes or tribal organizations who were unable to respond in time to sign these letters, but who also wish to be part of the message, to send their own letter. We would be happy to assist in your efforts.

Together, we can effect real change in Indian Country, and, as always, it is an honor to be a part of that effort.

Warm regards,  
Lloyd Miller

Lloyd B. Miller  
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Miller & Munson, LLP  
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Anchorage, Alaska 99501  
Telephone: (907)258-6377  
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**From:** Lloyd B. Miller

**Sent:** Tuesday, August 27, 2013 11:00 AM

**Subject: Tribal Leaders in the Contract Support Cost Coalition, plus additional Tribal Leaders with pending claims against IHS:**

1. This short email is just a heads up that I am preparing a proposed letter for your joint signatures, to go to all Members of the Senate Appropriations Subcommittee. A joint letter that all of you sign will be far more powerful than a letter I sign on your behalf as your attorney.

The letter will urge the Subcommittee Members to work to eliminate the hostile contract support cost language from the pending Senate appropriations bill, and to keep it out of any future continuing resolution or omnibus appropriations bill. This is the language which OMB and IHS developed in secret to take away tribal rights to full contract support cost funding in FY 2014.

2. I am also preparing a second proposed letter for your signature, this one to go to the Senate Indian Affairs Committee. This second letter will urge the Committee to hold an oversight hearing this Fall on the resolution of contract support cost claims, especially those pending against IHS. In 14 months since the Supreme Court Ramah decision, IHS has settled a mere 3 out of over 1,200 pending claims, with no end in sight to these interminable delays. Action is needed now, from Congress if not from IHS, to settle these claims at once. That is the message of the second letter.

The letters should be on their way to you later today, with a request that they be signed and the signature pages scanned and emailed back to us. We will then put together all signatures and convey the letters to Capitol Hill.

Warm regards to all of you.

Lloyd

Lloyd B. Miller  
Sonosky, Chambers, Sachse,  
Miller & Munson, LLP  
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Anchorage, Alaska 99501  
Telephone: (907) 258-6377  
Facsimile: (907) 272-8332  
E-Mail: [lloyd@sonosky.net](mailto:lloyd@sonosky.net)

#####



Bill John Baker, Principal Chief  
Cherokee Nation  
Post Office Box 948  
Tahlequah, OK 74465  
(918) 453-5000

Bill Anoatubby, Governor  
The Chickasaw Nation  
Post Office Box 1548  
Ada, OK 74820  
(580) 436-7216



August 30, 2013

The Honorable Barack Obama  
President of the United States of America  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

Dear Mr. President:

Thank you for meeting with us, a year ago, on July 18, 2012. We discussed the process for settling pending Indian tribal claims in the wake of the Supreme Court's June 2012 decisions in the Ramah and Arctic cases. You explained that the Judgment Fund was available to cover the claims, and that prompt resolution would follow. We are pleased to report that a settlement process to address all 8,800 claims with the BIA is underway and will hopefully conclude next year. Since it involves so many claims, it is complicated, but we are encouraged by the progress being made by the government and tribal legal teams.

The Indian Health Service, on the other hand, is far behind. IHS is facing some 1,200 claims filed by over 200 Tribes seeking over \$1 billion. Most of the claims are not in litigation and do not involve the Justice Department. Yet, IHS has only resolved 3 claims in 14 months. At that rate, it will take over 100 years to settle the claims. Even if IHS resolved 10 claims a month, it would take 10 years to resolve 1,200 claims—and at enormous agency cost in lawyers' time and outside accounting firms—yet, the BIA will likely resolve over 7 times as many claims in just 1 more year.

Resolution of the problem has become an absolute failure at IHS. The agency lawyers have stepped in and done what lawyers seem inclined to do: fight, hire experts, delay. There is no other way to explain so few claims being settled over so much time. Leadership at IHS must step up now! This process must move forward in a timely fashion.

The irony is that the IHS actually knows how much it underpaid the Tribes: every year IHS and the Secretary submit a certified report to Congress detailing the shortfalls. They certify the report as accurate. Until this past year, these reports were routinely used to resolve identical

tribal claims. If the agency used these reports today to settle the claims of the 200 Tribes, the issue would be resolved in a matter of months, rather than years. But it refuses to do so.

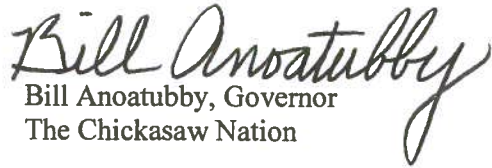
This is largely an agency problem. It does not involve the Justice Department. IHS must now answer to the White House! Since the agency has not promptly resolved known claims in the wake of definitive Supreme Court decisions based on certified historic data, we ask that you step in and take charge. Whatever is done, it is now imperative that the Administration bring to a swift conclusion this unfortunate chapter in the government's dealings with Indian Tribes.

We would be pleased to meet with you or your staff to discuss these matters at greater length. We stand ready to do everything possible to help in this matter.

Sincerely,



Bill John Baker, Principal Chief  
Cherokee Nation



Bill Anoatubby, Governor  
The Chickasaw Nation

September 3, 2013

Senator Maria Cantwell  
Chairwoman, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator John Barrasso  
Vice Chairman, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Tim Johnson  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator John McCain  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Jon Tester  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Lisa Murkowski  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Tom Udall  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator John Hoeven  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Al Franken  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Michael Crapo  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Mark Begich  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Deb Fischer  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Brian Schatz  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Senator Heidi Heitkamp  
Member, Committee on Indian Affairs  
Washington, D.C. 20510-6450

Dear Chairwoman Cantwell, Vice Chairman Barrasso and Distinguished Committee Members:

We, the Tribes and tribal organizations listed below, respectfully request that the Committee convene an oversight hearing this Fall on implementation of the Indian Self-Determination Act, in particular the resolution of the outstanding claims against the Indian Health Service over unpaid contract support costs.

No fewer than four times the Supreme Court has rejected the claims of successive Administrations and held that the government must treat Indian tribal contractors with as much respect as any other government contractor. The Supreme Court has made clear in the Cherokee, Ramah, Arctic Slope and Southern Ute cases that tribal contractors have a legal right to be paid

in full for services duly rendered to the United States, and that if payment is not made the Tribes have a right to receive the shortfall through claims filed under the Contract Disputes Act.


The last of these decisions, most importantly the Ramah decision, was issued in June 2012. At that time the Indian Health Service was already facing well over 100 claims, and by September 2012, IHS was facing over 1,200 claims filed by some 200 Tribes seeking over \$1 billion in past contract underpayments.


Yet, over the past 14 months IHS has only settled 3 of the over 1,200 claims. Even if IHS had settled 10 claims, at this rate it would take over 120 years to resolve all claims. Even if IHS had settled 100 claims over the past year, it would still take 12 years to settle all the claims.


Not only is this ludicrous, it is unnecessary. Every year IHS and the Secretary submit reports to Congress, certified as accurate, detailing IHS underpayments to every Tribe. If IHS had used those reports to resolve the outstanding claims, most, if not all, claims would have been resolved by now, 14 months after the Supreme Court's Ramah decision.


Something has to change. We cannot wait a century, or even decades, to resolve claims which the Supreme Court has already affirmed and which IHS has already documented. We respectfully but very strongly urge the Committee to hold an oversight hearing and to consider appropriate legislative solutions to expedite the resolution of these historic claims.


Sincerely,


  
Alaska Native Tribal  
Health Consortium


  
Arctic Slope Native  
Association


  
California Rural Indian  
Health Board


  
Cherokee Nation


  
Chickasaw Nation of  
Oklahoma


  
Chippewa Cree Tribe of  
the Rocky Boy's  
Reservation

  
Choctaw Nation of  
Oklahoma


  
Chugachmiut

  
Citizen Potawatomi Nation

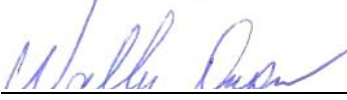
  
Confederated Salish and  
Kootenai Tribes


  
Confederated Tribes of  
Grand Ronde


  
Cook Inlet Tribal Council


  
Copper River Native  
Association

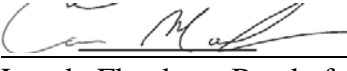
  
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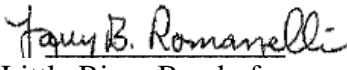
  
Fond du Lac Band of Lake  
Superior Chippewa

  
Fort Peck Assiniboine &  
Sioux Tribes


  
Knik Tribe

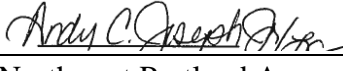
  
Kodiak Area Native  
Association


  
Lac du Flambeau Band of  
Lake Superior  
Chippewa Indians


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Little River Band of  
Ottawa Indians

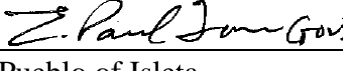
  
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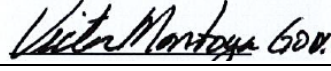
  
Nez Perce Tribe

  
Northwest Portland Area  
Indian Health Board


  
Pit River Health Service


  
Port Gamble S' Klallam  
Tribe

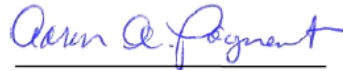
  
Pueblo of Isleta

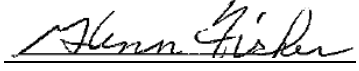
  
Pueblo of Sandia


  
Pueblo of Zuni


  
Puyallup Tribe of Indians

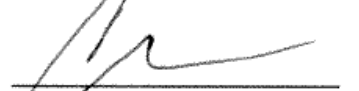
  
Riverside - San Bernadino  
County Indian Health,  
Inc.


  
Sault Ste. Marie Tribe of  
Chippewa Indians

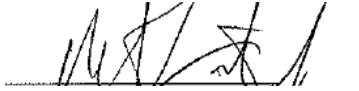
  
Shoshone-Bannock Tribes  
of the Fort Hall Indian  
Reservation

  
Shoshone-Paiute Tribes of  
the Duck Valley Indian  
Reservation


  
Skokomish Indian Tribe

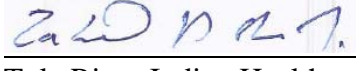
  
SouthEast Alaska Regional  
Health Consortium

  
Southern Indian Health  
Council

  
Standing Rock Sioux Tribe

  
Tanana Chiefs Conference

  
Toiyabe Indian Health  
Project, Inc.

  
Tule River Indian Health  
Center




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Tule River Indian Tribe of  
California



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Wampanoag Tribe of Gay  
Head (Aquinnah)



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Yukon-Kuskokwim Health  
Corporation



September 3, 2013

Senator Jack Reed  
Chairman, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Dianne Feinstein  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Patrick Leahy  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Tim Johnson  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Jon Tester  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Tom Udall  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Jeff Merkley  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Mark Begich  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Lisa Murkowski  
Ranking Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Thad Cochran  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Lamar Alexander  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Roy Blunt  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator John Hoeven  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Senator Mike Johanns  
Member, Subcommittee on Interior,  
Environment, and Related Agencies  
Washington, D.C. 20510

Dear Chairman Reed, Ranking Member Murkowski and Distinguished Subcommittee Members:

We, the Tribes and tribal organizations listed below, respectfully request that the Subcommittee strike from the pending appropriations bill the two provisos beginning on line 3 page 28 and on line 15 page 98. This language, modeled on an Administration request, would represent an enormous step backward in the Nation's dealings with Indian Tribes under the Indian Self-Determination Act.

In June 2012, the Administration lost three historic cases in the Supreme Court, the Ramah case, the Arctic Slope case and the Southern Ute case. The Supreme Court found that the Bureau of Indian Affairs and the Indian Health Service violated the law by failing to fully pay the Tribes for services rendered to the United States under Indian Self-Determination Act contracts and compacts. The Administration's response to that decision was stunning. Instead of complying with the law in the future, the Administration set out to change the law. It did this by proposing new language, the effect of which is to cut off future access to the courts for contract underpayments. If this language is enacted, once again Indian Tribes would be the only government contractors in the Nation whom the United States could cheat with impunity. Worse yet, the Administration developed this plan in secret, without any consultation with the Tribes and without any consultation with the authorizing committees.

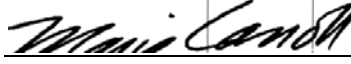
We appreciate that the Supreme Court's decision has been interpreted by the Congressional Budget Office as implicating a scoring issue. Putting aside our disagreement with the CBO, the correct response is to follow the House Subcommittee's approach, endorsed by the co-chairs of the House Native American Caucus, to altogether delete any mention of contract support costs. This bipartisan approach solves CBO's problems, leaves intact the Indian Self-Determination Act, and honors the Supreme Court's judgment that Indian tribal contractors must be treated at least as well as any other government contractor.


In sum, we respectfully request that the two provisos identified above be deleted from the Senate Bill and omitted from any future continuing resolution or omnibus funding measure.

Respectfully,

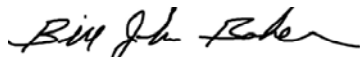
  
Alaska Native Tribal  
Health Consortium

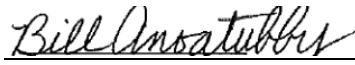
  
Aleutian Pribilof Islands  
Association

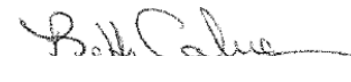
  
Arctic Slope Native  
Association

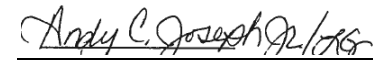
  
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Health Board

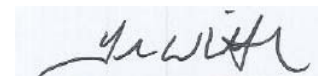
  
Central Council of Tlingit  
& Haida Indian Tribes  
of Alaska


  
Cherokee Nation

  
Chickasaw Nation of  
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Eastern Aleutian Tribes


  
Northwest Portland Area  
Indian Health Board

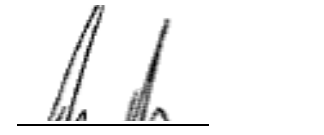
  
Chippewa Cree Tribe of  
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Reservation

  
Fond du Lac Band of Lake  
Superior Chippewa


  
Pit River Health Service


  
Choctaw Nation of  
Oklahoma

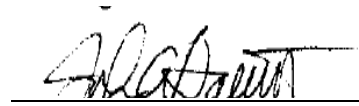
  
Fort Peck Assiniboine &  
Sioux Tribes


  
Port Gamble S' Klallam  
Tribe


  
Chugachmiut

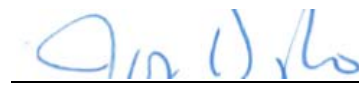
  
Knik Tribe


  
Pueblo of Isleta

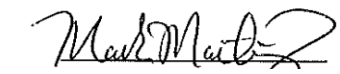
  
Citizen Potawatomi Nation


  
Kodiak Area Native  
Association

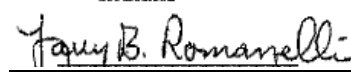
  
Pueblo of Sandia

  
Confederated Salish and  
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Lac du Flambeau Band of  
Lake Superior  
Chippewa Indians

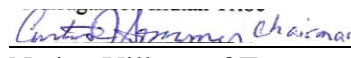
  
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Confederated Tribes of  
Grand Ronde

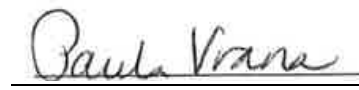
  
Little River Band of  
Ottawa Indians

  
Puyallup Tribe of Indians


  
Cook Inlet Tribal Council

  
Native Village of Tanana

  
Riverside - San Bernadino  
County Indian Health,  
Inc.

  
Copper River Native  
Association

  
Nez Perce Tribe

  
Sault Ste. Marie Tribe of  
Chippewa Indians



Shoshone-Bannock Tribes  
of the Fort Hall Indian  
Reservation



Tule River Indian Tribe of  
California



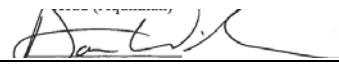
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Reservation



Wampanoag Tribe of Gay  
Head (Aquinnah)



Skokomish Indian Tribe



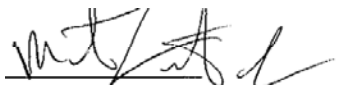
Yukon-Kuskokwim Health  
Corporation



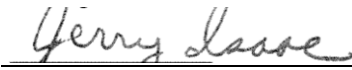
SouthEast Alaska Regional  
Health Consortium



Southern Indian Health  
Council



Standing Rock Sioux Tribe



Tanana Chiefs Conference



Toiyabe Indian Health  
Project, Inc.



Tule River Indian Health  
Center