

# **Tribal Contract Support Cost Summit Statement of Recommendations**

Held on:  
July 31 – August 1, 2013

## **Sponsored by:**



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Health Board



Alaska Native Tribal  
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National Tribal  
Contract  
Support Cost  
Coalition  
Members



## **Tribal Contract Support Cost Summit Statement of Recommendations**

July 31 – August 1, 2013  
Portland, Oregon

On July 31 and August 1, 2013, a coalition of Tribal organizations<sup>1</sup> convened a “Tribal Contract Support Cost Summit” in Portland, Oregon. Over 130 individuals attended representing over 35 Tribes and tribal organizations. The Summit covered a wide range of contract support cost (CSC) issues. The meeting allowed Tribal leaders, health directors, tribal administrators, financial experts and law firms representing Tribes to have a detailed discussion about CSC issues. The Summit did not allow federal government officials to participate and allowed participants to have an open and frank discussion about CSC issues in Indian Country. Presentation and topics discussed included: the Supreme Court’s recent *Ramah* decision; the Administration’s proposed policy to cap Tribal CSCs and remove the legal remedy currently available to file claims for unpaid CSCs; IHS settlement efforts related to past CSC claims; and addressing CSC accounting issues in the future.

The following is a summary of issues discussed at the Summit and recommendations to address those issues. This information may be translated into a letter by Summit participants and their respective organizations. It may also be used by Tribes in their interactions with Congress and during the consultation process on CSC issues.

### **1. Tribal Consultation**

Summit participants discussed the Administration’s CSC proposal contained in the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) FY 2014 Congressional Budget Justification documents submitted to Congress. Participants vehemently explained their concerns about the Administration’s unilateral proposal to cap contract support cost (CSC) payments to Tribes and tribal organizations while eliminating historically-available contract remedies. Tribal leaders and others described this as a radical and unfortunate reaction to the tribal victory in the *Ramah* case, and one that would fundamentally alter the nature of tribal self-determination and undermine the most successful federal-Indian policy in the history of the United States.

Summit participants recommend that no change in CSC policy or implementation should be made by the Administration or by Congress until true and thorough government-to-government consultation can be conducted, consistent with President Obama’s November 5, 2009 Memorandum directing full implementation of Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Tribal consultation is also required pursuant to the IHS Tribal Consultation Policy. The IHS policy stipulates that consultation should occur before any action is taken that will significantly affect Indian Tribes. The current CSC policy issues have a direct and significant adverse impact on Tribes, and consultation should have been conducted on these policy issues. Tribes expressed their frustration that the IHS was in violation of its own consultation policy despite

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<sup>1</sup> The Tribal Contract Support Cost Summit was hosted by the Alaska Native Health Board; Alaska Native Tribal Health Consortium; California Rural Indian Health Board; Northwest Portland Area Indian Health Board; United South and Eastern Tribes; and the National Tribal Contract Support Cost Coalition.

espousing the Agency's commitment to Tribal consultation and improving relationships with Tribes as Agency priorities. Tribes expressed their opposition to IHS's recent statement that it will first consult in closed sessions with a small group of tribal representatives, instead of in open proceedings with all impacted Tribes and tribal organizations. Moving forward, Summit participants recommended that a consultative process should be jointly undertaken by the BIA/IHS and tribal leaders, informed by a joint federal/tribal technical work group, and coordinated through regional and national tribal organizations. If legislative changes are deemed necessary, such changes should only be developed jointly with tribal concurrence.

## 2. Congress Should Reject the Administration's Proposal to cap CSC funds

The CSC Summit participants were unanimous in their recommendation that the Congress reject the Administration's proposed restructuring of the appropriations Act to limit the amount of contract support cost funds to each tribe to the amount stated as "available" in a "table" the agencies would provide to the Appropriations Committees. Since each tribal contract is "subject to the availability of appropriations," the Administration hopes this language will limit what is "available" to the amount in the "table" and thereby cut off future claims for unpaid CSCs.

Summit participants agreed that the Administration's unilateral proposal is an outrageous and unwarranted overreaction to the *Ramah* decision. They pointed out that the Supreme Court simply ruled that the same rules which apply to other government contractors apply to tribal contractors. Tribal leaders and health directors were united in their opposition to the Administration's proposal and were unanimous in their assessment that the proposal would be a great step backward in the most successful federal Indian policy in the history of the United States.

The Administration proposal punishes Tribes for their Supreme Court victories in the *Ramah* and *Arctic Slope* cases. Those cases confirmed that Tribes have a contractual and statutory right to be paid for the full costs of running federal government programs and facilities under Indian Self-Determination Act contracts. The Administration's proposal singles out Tribes from all other government contractors and denies the Tribes future compensation for services rendered to the government under their contracts.

All Summit participants acknowledged that the Administration's proposal is also unworkable and that the proposed individual contract caps are likely based on 2012 data—not 2014 data. The Administration's proposal is shortsighted in that it provides no mechanism for moving overpayments to some Tribes in order to address underpayments to others. None of the cap amounts have been verified with the Tribes, and the tables that were recently published are in draft form and contain obvious errors. The proposal was never vetted with the Tribes, and the Administration is only now beginning consultation on it (though on a very limited basis, and the IHS has undertaken no meaningful consultation whatsoever with Indian country). Full and open consultation must be completed before any changes are made to the 38-year-old self-determination contracting regime (and then only by the authorizing committees, after full hearings and careful deliberation).

### 3. Recommendation on Supreme Court Options

The *Ramah* decision discussed options available to Congress to address the government's financial obligation to fund self-determination contract support costs. The purpose of this discussion in the Court's opinion was simply to show that the Court's ruling that tribal contracts are governed by the same laws as other government contracts did not lock Congress into any one approach. The Court's options were never intended as recommendations to the Administration or to Congress for addressing CSC underpayments, and the decision did not consider the policy implications of the options it provided.

Summit participants unanimously agreed that the *Ramah* decision makes clear beyond any reasonable doubt that the payment of contract support costs is a binding contractual obligation due all Tribes and tribal organizations that operate BIA and IHS contracts. The Summit participants respectfully urge Congress to reject the Administration's proposal and to provide sufficient funding for the BIA and the IHS to meet Tribes' total contract support cost requirements.

In FY 2011, the House Interior Appropriations Committee explained that it believed that both the BIA and IHS should pay all contract support costs for which it has contractually agreed. Congress directed the IHS to include the full cost of the contract support obligations in its fiscal year 2013 budget submission. The *Ramah* decision explained these circumstances and outlined this as a viable option for the Congress and Administration to resolve and fund CSC requirements. The Summit participants further support and recommend that Congress not include any CSC caps in the FY 2014 appropriations (as was the case with the IHS appropriation until FY 1998; and with the BIA until FY 1994). The Summit participants support the recently-released House subcommittee appropriations bill for FY 2014 on CSC issues and adamantly oppose the Senate subcommittee bill. They call upon all Members of both subcommittees to oppose the Administration's proposal in the development of any omnibus legislation to fund FY 2014.

### 4. Recommendations for the IHS Settlement Process

The Summit participants acknowledge that something structurally has to change in order for the Administration and Tribes to be able to settle an estimated 1,300 or more claims. There simply is not enough time or resources to go through the laborious process that IHS is requiring Tribes to go through in order to settle past years' claims. Summit participants discussed and recommended the need for a "political solution" to the core problem of IHS working to settle CSC claims. The IHS position communicated in Dear Tribal Leader Letters promulgates a position that the Agency wants to work to settle claims "as soon as possible." However there has been no meaningful action to evidence this commitment by IHS leadership. Summit participants recommend that the Congress, the Whitehouse, and DOI and HHS Secretaries develop a strategy to accelerate settlement of these claims in a manner that is also fair and in full compliance with the Supreme Court's *Ramah* decision. Summit participants agreed that a logical approach to this would be for a White House intervention with Senate Committee oversight in order to get the agency settlement process revamped and on track.

There was considerable discussion about the IHS settlement process of past years' unpaid CSC claims. It is estimated that over two-hundred tribes have filed over 1,300 individual claims for unpaid contract support cost payments totaling in excess of \$1 billion. Tribal attorneys discussed

their experience seeking to settle claims with IHS on behalf of their tribal clients. Discussion issues included some of the obstacles they have faced and the fact that, while the IHS Director is publicly stating that the Agency wants to settle these claims promptly, the IHS's actions thus far contradict that assertion. For example, one of the Tribal contractors explained that the IHS has not yet replied to a settlement offer made over six months ago. Further, Tribes requesting settlement offers from IHS, and requesting to bypass the burden of document production and retaining experts and attorneys, have now been told they must wait until 2014 to receive such offers.

Participants shared IHS's information that in the first year after the *Ramah* and *Arctic* decisions, IHS had only settled 2 contract claims out of some 1,300 pending claims. It was noted that, even if IHS managed to settle 10 such claims each year, it would take 130 years to settle all claims, and that if IHS settled 10 claims a month it would still take 10 years to settle all claims. The participants urged IHS to revamp its entire approach to settlement and to agree to begin settlement discussions based upon historic, agency-certified, IHS shortfall reports submitted to Congress.

Participants also noted that IHS is only willing to discuss settlement of shortfall claims, not miscalculated rate claims or damages from lost third-party collections, despite a May 2013 decision in the *Ramah Navajo School Board, Inc. v. Sebelius* case, awarding lost third-party collection damages. Participants were unanimous that HIS should put these claims 'on the table' for discussion.

The Summit also focused on the accounting issues that have arisen in connection with the settlement of CSC claims. It was noted that prior to the *Ramah* decision, tribal contractors were able to reach settlements with the agencies based largely on the annual CSC shortfall reports certified as accurate by the agencies and submitted to Congress as required by law. This has changed since the *Ramah* decision. In the past year the IHS has taken the position that tribal contractors are only entitled to actual "costs incurred" rather than their full requirement as determined by the negotiated direct CSC and indirect cost rate, and that this approach essentially requires re-auditing every year of every contract claim submitted by every Tribe. The Summit participants agreed that the ISDEAA requires payment of the full shortfall and that the shortfall reports should be the benchmark for settlement negotiations. While there are limitations with the CSC shortfall reports they have been relied upon by the Agency, the Congress and Tribal contractors. Summit participants agreed that the shortfall report data could be improved and validated to make them even more reliable to settle past years' claims. Otherwise, it could take decades for Tribes to go through the settlement document exchange process and negotiate with IHS over damages calculations in order to avoid litigation. Summit participants agreed that the current IHS approach is not a reasonable approach for settling 1,300 claims.

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**Tribal Contract Support Cost Summit  
July 31 – August 1, 2013  
Portland, Oregon**

List of Registrants

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| 1. Greg Anderson, Self-Governance Coordinator<br>Port Gamble S'Klallam Tribe                                 | 15. Casey Carrillo, CFO<br>Tule River Indian Health Center   |
| 2. Gary Archuleta, Board Member<br>Feather River Tribal Health   | 16. Leatha Chase, Board Tresasurer<br>Feather River Tribal Health                                    |
| 3. Greig Arnold, Tribal Council<br>Makah Tribe   | 17. Charles Clement,<br>South East Alaska Regional Consortium  |
| 4. Nora Atienza, CFO<br>Ketchikan Indian Community   | 18. Janice Clements, Health Commission<br>Confederated Tribes of Warm Springs                        |
| 5. Theresa Belton, Chief Financial Officer<br>Central Council of the Tlingit & Haida Indian<br>Tribes Alaska | 19. Douglas Coleman, CPA<br>Makah Tribe  |
| 6. Joe Beresk, Board<br>EAT  | 20. Mike Collins, Director of Finance<br>Confederated Tribes of Warm Springs                         |
| 7. Jacoline Bergstrom, Health Services Deputy<br>Tanana Chiefs Conference                                    | 21. Rebecca Crocker, THD<br>Nooksack   |
| 8. Brandon Biddle,<br>Alaska Native Health Board   | 22. Mike Crocker, CFO<br>Puyallup Tribe  |
| 9. Barbara Bird, Board Chair<br>Feather River Tribal Health  | 23. Kevin Cronk, Staff Accountant<br>REDW, LLC   |
| 10. Alicia Blossom, Finance Director<br>Shoshone Pauite Tribe  | 24. Jim Crouch, Executive Director<br>CRIHB  |
| 11. Todd Bratton, Health Program Improvement<br>Manager<br>Cowlitz Tribe                                     | 25. Carolyn Crowder, Health Director<br>Aleutian Pribilof Island Association                         |
| 12. Brenda Bremner, General Manager<br>Confederated Tribes of Siletz Indians                                 | 26. Caroline Cruz, Health & Human Services<br>General Manager<br>Confederated Tribes of Warm Springs |
| 13. Alice Bundalian, Finance Director<br>Port Gamble S'Klallam   | 27. Elaine Dado, Executive Assistant<br>NW Portland Area Indian Health Board                         |
| 14. Jessica Burger, Tribal Manager<br>Little River Band of Ottawa Indians                                    | 28. Kimberly D'Aquila, Assistant Tribal Attorney<br>Grand Ronde                                      |

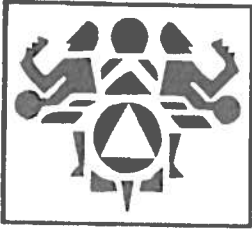
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| 29. Eric Davenport, Senior Consultant<br>Strategic Wealth Management                        | 46. Amy Fredeen,<br>Cook Inlet Tribal Council                                |
| 30. Ron Demaray, Consultant<br>Demaray Consulting   | 47. Diane Gange, Chief Financial Officer<br>Jamestown S'Klallam Tribe        |
| 31. Dallas Desiro, Adm. Dir<br>Port Gamble S'Klallam  | 48. Corrine Garza, Chief Operating Officer<br>Tlingit & Haida                |
| 32. Sonja Deskins-Toye, Health Clinic Finance<br>Manager<br>Tulalip Tribe                   | 49. Tim Gilbert, Tribal Health Director<br>Confederated Tribes of Umatilla   |
| 33. Brian Deveau, CPA<br>Moss Adams   | 50. Kerry Gilmore, Accountant<br>Shoshone Bannock Tribes                     |
| 34. Whitney Devlin, Executive Administrative<br>Assistant<br>Cowlitz Tribe                  | 51. Joshua Gilmore, Health Finance Director<br>Tanana Chiefs Conference      |
| 35. Michael E. Douglas, General Counsel<br>SouthEast Alaska Regional Health Consortium      | 52. James Glaze, Attorney<br>Sonosky, Chambers, Sachse, Endreson &<br>Perry  |
| 36. LeaAnn Easton,<br>Confederated Tribes of Siletz Indians                                 | 53. Lisa Griggs, Project Assistant<br>NW Portland Area Indian Health Board   |
| 37. Sharon Edenfield,<br>Confederated Tribes of Siletz Indians                              | 54. Angelo Gonzales, Executive Director<br>Shoshone-Bannock Tribes           |
| 38. Nancy Egan, Tribal Program Administrator<br>Shoshone Paiute Tribes                      | 55. Jess Groll, CFO<br>Cowlitz Tribe   |
| 39. Diane Evans-Sommer, Health Services Grants<br>Administrator<br>Tanana Chiefs Conference | 56. Steve Hagler, Tribal CFO<br>Shoshone-Bannock Tribes                      |
| 40. Isadora Evanston, Health Board Delegate<br>Fort Mojave Indian Tribe                     | 57. Mark Hamm, CFO<br>Aleutian Pribilof Island Association                   |
| 41. Garvin Federenko, CFO<br>Alaska Native Tribal Health Consortium                         | 58. Colin Hampson, Partner<br>Sonosky, Chambers, Sachse, Endreson &<br>Perry |
| 42. Charles Ferguson, Assitant Controller<br>Mashantucket Pequot Tribal Nation              | 59. Ava Hannaweeke,<br>Zuni Tribe  |
| 43. Joe Finkbonner, Executive Director<br>NW Portland Area Indian Health Board              | 60. Andrea Hanson, Finance Director<br>Passamaquoddy Tribe @ Indian Township |
| 44. Charles Fourcloud   | 61. Vickie Hanvey, Self Governance Administrator<br>Cherokee Nation          |
| 45. Donna Frank, Finance<br>Ketchikan Indian Community                                      | 62. Robert Hardy, CFO<br>Klamath Tribal Health & Family Services             |

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|---|---|
| 63. Phil Harju, Tribal Attorney<br>Cowlitz Tribe  | 80. Felcia Leitka, HTBC<br>Hoh Tribe  |
| 64. Clint Hasting, Self Governance Analyst<br>Cherokee Nation   | 81. Gary Leva, CEO<br>Benewah Health & Wellness Center                              |
| 65. Dan Hester, Attoney   | 82. Neal Malmsteu,<br>Redding Rancheria   |
| 66. Eugena "Mikey" Hobucket, Self Governance<br>Coordinator<br>Quinault Nation                                | 83. Eleanor Manning,<br>Hobbs Straus Dean & Walker                                  |
| 67. Raeanne Holms, Executive Assistant<br>Central Council of the Tlingit & Haida Indian<br>Tribes Alaska      | 84. Tony Marshall, Tribal Health Director<br>Shoshone Pauite Tribe                  |
| 68. Steve Hudson, Interim Health Adminstrator<br>Ketchikan Indian Community                                   | 85. David Mather, Consultant<br>Mather and Assoc., LLC                              |
| 69. Gayline Hunter, Chairperson<br>Tule River Indian Health Center  | 86. Caroline Mayhew,<br>Hobbs Straus Dean & Walker                                  |
| 70. William Iyall, Chairman and Presideny<br>Cowlitz Tribe  | 87. Brandie McNamee, Finance<br>Confederated Tribes of Warm Springs                 |
| 71. Arlene Jackson, Interim Health Adminstrator<br>Ketchikan Indian Community                                 | 88. Ashlee Melvinjon, Vice Chairman<br>Hoh Tribe                                    |
| 72. Leroy Jackson, HGM<br>Klamath Tribal Health & Family Services   | 89. Anglea Mendez, THHS<br>Shoshone-Bannock Tribes                                  |
| 73. Carol Jacobs-Kosht, Tribal Accountant<br>Confederated Tribes of Coos, Lower Umpqua<br>and Siuslaw Indians | 90. Jerry Meninick, Human Services Aminstration<br>Deputy Director<br>Yakama Nation |
| 74. Jimmy Johnson, Chief Financial Officer<br>Utah Navajo Health Systems                                      | 91. Pat Mercier<br>Grand Ronde Tribe  |
| 75. Andy Joseph, Chairperson<br>Conf. Tribes of Colville  | 92. Lloyd Miller, Attorney<br>Sonosky, Chambers, Sachse, Endreson &<br>Perry, LLP   |
| 76. Cassie Katchia, TWS/IHS Budget<br>Confederated Tribes of Warm Springs                                     | 93. Stan Mishin, Financial Service Director<br>Kenaitze Indian Tribe                |
| 77. Vivian Kimbol, Klamath Tribes Vice-Chair<br>Klamath Tribe   | 94. Lisa Mock, General Counsel<br>Southcentral Foundation                           |
| 78. Chuck Kimbol, Klamath Tribal Council<br>Klamath Tribe   | 95. Jess Montoya, CEO<br>Riverside-San Bernardino County Indian<br>Health, Inc.     |
| 79. Jacqueline Left Hand Bull, Administrative<br>Officer<br>Northwest Portland Area Indian Health Board       | 96. Ron Moody,<br>CRIHB   |

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| 97. Eugene Mostofi, Fund Accounting Manager<br>NPAIHB                              | 114. Zahid Sheikh, CEO<br>Tule River Indian Health Center                |
| 98. Judy Muschamp, THD<br>Confederated Tribes of Siletz Indians                    | 115. John Sherrett,<br>Quileute Health Clinic                            |
| 99. Lindsay Naas, Attorney<br>UNHS, WIHCC  | 116. Jim Sherrill, Health and Human Service<br>Director<br>Cowlitz Tribe |
| 100. Glenda Nelson, Board Vice-Chair<br>Feather River Tribal Health                | 117. Ben Shilling, Internal Auditor<br>Tanana Chiefs Conference          |
| 101. Josh Newton,<br>Karnopp Petersen  | 118. Rosenda Shippentower,<br>Umatilla                                   |
| 102. Sandra Ohms, Human Services Administration<br>Accountant<br>Yakama Nation     | 119. Donna Singer, CEO<br>Utah Navajo Health Systems                     |
| 103. Ronald "Lee" Olson, VP, Finance<br>Southcentral Foundation                    | 120. Jim Sizemore, Partner<br>Strategic Wealth Management                |
| 104. Steve Osborne, Partner<br>Hobbs Straus Dean & Walker                          | 121. Faren Smith, CCO<br>Norton Sound Health Corp, (NSHC)                |
| 105. Samuel Penney, Nez Perce Tribe Executive<br>Committee<br>Nez Perce            | 122. Mary Staab, CFO<br>Norton Sound Health Corp, (NSHC)                 |
| 106. Preston Pete, Finance Director<br>Consolidated Tribal Health Projects         | 123. Sharon Stanphill, THD<br>Cow Creek Tribe                            |
| 107. David Peterson, Controller<br>Puyallup Tribe                                  | 124. Geoffrey Strommer, Attorney<br>Hobbs, Straus, Dean & Walker, LLP    |
| 108. Lisa Rieger,<br>Cook Inlet Tribal Council                                     | 125. Greg Trueb, Finance Director<br>Suquamish Tribe                     |
| 109. Jim Roberts, Policy Analyst<br>NW Portland Area Indian Health Board           | 126. Celia Tsabetsaye, Chief Finance Officer<br>Zuni Tribe               |
| 110. Starla Roels, Attorney<br>Hobbs Straus Dean & Walker                          | 127. Angela Vanderpool, Executive Director<br>Chugachmiut                |
| 111. C. Bryant Rogers, Attorney<br>VanAmberg, Rogers, Yepa, Abeita & Gomez,<br>LLP | 128. Marty Wafford, Executive Officer<br>Chickasaw Nation                |
| 112. Sal Sahme,<br>WSCT HITH & Wel Com   | 129. Jim Wallis, CFO<br>Confederated Tribes of Umatilla                  |
| 113. Sandra Sampson, Health Commission<br>Confederated Tribes of Umatilla          | 130. Mendy Watkins, Director of OMB<br>Chickasaw Nation                  |

131. Diann Weaver, Tribal Health Director  
Confederated Tribes of Coos, Lower Umpqua  
and Siuslaw Indians
132. Randy Wilson,  
Confederated Tribes of Siletz Indians
133. Dan Winkelman, VP Admin. & General  
Counsel  
Yukon Kuskokwim Health Corp
134. Sarah Works, Reservation Attorney  
Confederated Tribes of Colville Reservation
135. Leslie Wosnig, THD  
Suquamish Tribe
136. Kim Zillyett-Harris, Health Director  
Shoalwater Bay





**NORTHWEST  
PORTLAND  
AREA  
INDIAN  
HEALTH  
BOARD**

Burns-Paiute Tribe  
Chehalis Tribe  
Coeur d'Alene Tribe  
Colville Tribe  
Coos, Suislaw &  
Lower Umpqua Tribe  
Coquille Tribe  
Cow Creek Tribe  
Cowlitz Tribe  
Grand Ronde Tribe  
Hoh Tribe  
Jamestown S'Klallam Tribe  
Kalispel Tribe  
Klamath Tribe  
Kootenai Tribe  
Lower Elwha Tribe  
Lummi Tribe  
Makah Tribe  
Muckleshoot Tribe  
Nez Perce Tribe  
Nisqually Tribe  
Nooksack Tribe  
NW Band of Shoshone Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinalt Tribe  
Samish Indian Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Shoshone-Bannock Tribe  
Siletz Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Umatilla Tribe  
Upper Skagit Tribe  
Warm Springs Tribe  
Yakama Nation

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[david\\_mullon@indian.senate.gov](mailto:david_mullon@indian.senate.gov)  
[paul\\_wolfe@cantwell.senate.gov](mailto:paul_wolfe@cantwell.senate.gov)  
Original Sent Via USPS

September 9, 2013

The Honorable Maria Cantwell, Chairwoman  
The Honorable John Barrasso, Vice-Chairman  
Senate Committee on Indian Affairs  
United States Senate  
838 Hart Office Building  
Washington, DC 20510

Dear Senators Cantwell and Barrasso:

The Northwest Portland Area Indian Health Board (NPAIHB) represents health care issues of forty-three federally-recognized Tribes in the states of Idaho, Oregon, and Washington. We write in follow up to our February 14, 2013 letter to the Senate Committee on Indian Affairs (SCIA) requesting an oversight hearing on contract support cost (CSC) issues.

We want to advise you of recent Tribal activities on crucial CSC policy issues that we believe represent a common position of Tribal governments nationally. Most certainly, they represent the view of those Tribes and tribal organizations that participated in a national Tribal Contract Support Cost Summit held in Portland, Oregon on July 31-August 1, 2013.

The Summit included 130 registered attendees that represent thirty-five tribes, as well as tribal organizations that represent 328 federally recognized Tribes throughout Indian Country. The Summit covered a range of contract support cost (CSC) policy issues that currently loom in the appropriations process, the courts, and before Congress. The Summit was attended by Tribal leaders, health directors, and tribal attorneys and financial experts. Federal government officials did not participate in the Summit so that Tribes could have a candid and frank discussion about CSC policy issues. This letter summarizes recommendations of the Summit and the attached report provides more detail on the findings for each recommendation.

1. Retracts the most successful Federal Indian Policy: There is growing concern among elected Tribal leaders about the Administration's CSC policy proposal contained in the FY 2014 President's Request. Tribal leaders at the Summit unanimously agree that such a proposal to amend CSC payments to Tribes will halt the path of Indian Self-Determination and is a giant step backward in the most successful federal Indian policy in the history of the United States.


2. **Tribal Consultation:** The Summit attendees agree that the Administration should not make or implement any changes in CSC policy until true and thorough government-to-government consultation can occur consistent with President Obama's November 5, 2009 Memorandum directing full implementation of Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") and consistent with the IHS and BIA Tribal consultation policies.
3. **Congress should reject the Administration Proposal and remove CSC caps:** All Summit participants agree that Congress should reject the Administration's proposed restructuring of the appropriations Act to limit the amount of contract support cost funds to each tribe to the amount stated as "available" in a "table" that the agencies have provided to the Appropriations Committees. Summit participants were unanimous in a recommendation that Congress eliminates the CSC caps in the FY 2014 appropriation. The Summit was united in their support of the House appropriations bill for FY 2014 on CSC issues and adamantly opposed the Senate subcommittee bill that contains the Administration's proposal. The Summit proceedings call upon Congress and the Members of both subcommittees to oppose the Administration's proposal in the development of any continuing resolutions or omnibus legislation to fund FY 2014.
4. **Recommendations for settlement of past year's claims:** The Summit acknowledged that something structurally has to change in order for the Administration and Tribes to be able to settle an estimated 1,300 or more claims in a reasonable time. Tribes shared IHS' information that in the first year after the *Ramah* and *Arctic* decisions, IHS has only settled 2 contract claims out of some 1,300 pending claims. It was noted that, even if IHS managed to settle 10 claims per year, it would take 130 years to settle all claims; and that if IHS settled 10 claims a month it would still take 10 years to settle all claims. The Summit recommends that Congress, the Whitehouse, and DOI and HHS Secretaries develop a strategy to accelerate settlement of past CSC claims in a manner that is fair and in full compliance with the Supreme Court's *Ramah* decision. Summit participants acknowledge that a logical approach would be for a White House intervention with Senate Committee oversight in order to get the BIA and IHS settlement process revamped and on track.

Tribes and the IHS are expending considerable resources on litigation and settlement costs that are detracting from patient care. We believe the recommendations developed at the Tribal CSC Summit can help to address the issues and save both Tribes and IHS funds to resolve this matter. On behalf of our member Tribes and the coalition of Tribes that participated in the Summit, we respectfully request that you support the recommendations included in our letter and discussed further detail in the attached "Summit Statement of Recommendations."

In closing, we believe that the SCIA convening an oversight hearing on "CSC issues in Indian Country" would help to investigate ways and solutions for Tribes and the federal agencies to work with Congress to address full CSC funding and avoid further litigation.

If you have any questions or would like to discuss further, please do not hesitate to contact Jim Roberts, Policy Analyst, at (503) 347-7664 or by email at [jroberts@npaihb.org](mailto:jroberts@npaihb.org).

Sincerely,

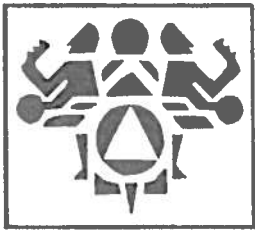


Andy Joseph, Jr., NPAIHB Chair  
Colville Tribal Council Member

cc: Mary Pavel, Majority Staff Director and Chief Counsel  
David Mullon - Staff Director and Chief Counsel  
Portland Area Congressional Delegation  
National Indian Health Board  
Fawn Sharp, ATNI President  
Jackie Johnson Pata, NCAI Executive Director  
Portland Area Tribes

Attachment: "Tribal CSC Summit: Statement of Recommendations"





September 10, 2013

## **NORTHWEST PORTLAND AREA INDIAN HEALTH BOARD**

Burns Paiute Tribe  
Chehalis Tribe  
Coeur d'Alene Tribe  
Colville Tribe  
Coos, Siuslaw &  
Lower Umpqua Tribe  
Coquille Tribe  
Cow Creek Tribe  
Cowlitz Tribe  
Grand Ronde Tribe  
Hoh Tribe  
Jamestown S'Klallam Tribe  
Kalispel Tribe  
Klamath Tribe  
Kootenai Tribe  
Lower Elwha Tribe  
Lummi Tribe  
Makah Tribe  
Muckleshoot Tribe  
Nez Perce Tribe  
Nisqually Tribe  
Nooksack Tribe  
NW Band of Shoshone Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinault Tribe  
Samish Indian Nation  
Sault Ste. Marie Tribe  
Shoalwater Bay Tribe  
Shoshone-Bannock Tribe  
Siletz Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Umatilla Tribe  
Upper Skagit Tribe  
Warm Springs Tribe  
Yakama Nation

2121 SW Broadway  
Suite 300  
Portland, OR 97201  
(503) 228-4185  
(503) 228-8182 FAX  
www.npaihb.org

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

The Northwest Portland Area Indian Health Board (NPAIHB) is a Public Law 93-638 Tribal organization that represents health care issues of forty-three federally-recognized Tribes in the states of Idaho, Oregon, and Washington. The health programs that we represent provide health care to over 106,300 American Indian and Alaska Natives (AI/AN) people in the IHS Portland Area.

We write to advise you of recent Tribal activities on crucial contract support costs policy issues related to the Interior Appropriations bill for the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA). We believe that the following recommendations represent a common position of Tribal governments nationally. Most certainly, they represent the view of 328 Tribes and tribal organizations that were represented at a national Tribal Contract Support Cost Summit held in Portland, Oregon on July 31-August 1, 2013. The recommendations we transmit in this letter pertain to pending action that the Senate Appropriations Committee will be taking up on the Interior Appropriations bill and/or continuing resolution for FY 2014.

The Summit included 130 registered attendees that represent thirty-five tribes, as well as tribal organizations that represent 328 federally recognized Tribes throughout Indian Country. The Summit covered a range of contract support cost (CSC) policy issues that currently loom in the appropriations process, the courts, and before Congress. The Summit was attended by Tribal leaders, health directors, and tribal attorneys and financial experts. Federal government officials did not participate in the Summit so that Tribes could have a candid and frank discussion about CSC policy issues. This letter summarizes recommendations of the Summit and the attached report provides more detail on the findings for each recommendation.

1. Administration's proposed policy retracts the most successful Federal Indian Policy: There is growing concern among elected Tribal leaders about the Administration's CSC policy proposal contained in the FY 2014 President's Request. Tribal leaders at the Summit unanimously agree that such a proposal to amend CSC payments to Tribes will halt the path of Indian Self-Determination and is a giant step backward in the most successful federal Indian policy in the history of the United States.
2. Tribal Consultation: The Summit attendees agree that the Administration should not make or implement any changes in CSC policy until true and thorough government-to-government consultation can occur consistent with President Obama's November 5, 2009 Memorandum directing full implementation of Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") and consistent with the IHS and BIA Tribal consultation policies.
3. Congress should reject the Administration Proposal and remove CSC caps: All Summit participants agree that Congress should reject the Administration's

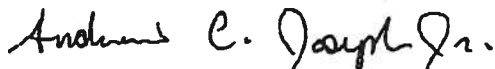
proposed restructuring of the appropriations Act to limit the amount of contract support cost funds to each tribe to the amount stated as "available" in a "table" that the agencies have provided to the Appropriations Committees. Summit participants were unanimous in a recommendation that Congress eliminates the CSC caps in the FY 2014 appropriation. The Summit was united in their support of the House appropriations bill for FY 2014 on CSC issues and adamantly opposed the Senate subcommittee bill that contains the Administration's proposal. The Summit proceedings call upon Congress and the Members of both subcommittees to oppose the Administration's proposal in the development of any continuing resolutions or omnibus legislation to fund FY 2014.

4. Recommendations for settlement of past year's claims: The Summit acknowledged that something structurally has to change in order for the Administration and Tribes to be able to settle an estimated 1,300 or more claims in a reasonable time. Tribes shared IHS' information that in the first year after the *Ramah* and *Arctic* decisions, IHS has only settled 2 contract claims out of some 1,300 pending claims. It was noted that, even if IHS managed to settle 10 claims per year, it would take 130 years to settle all claims; and that if IHS settled 10 claims a month it would still take 10 years to settle all claims. The Summit recommends that Congress, the Whitehouse, and DOI and HHS Secretaries develop a strategy to accelerate settlement of past CSC claims in a manner that is fair and in full compliance with the Supreme Court's *Ramah* decision. Summit participants acknowledge that a logical approach would be for a White House intervention with Senate Committee oversight in order to get the BIA and IHS settlement process revamped and on track.

Tribes and the IHS are expending considerable resources on litigation and settlement costs that are detracting from patient care. We believe the recommendations developed at the Tribal CSC Summit can help to address the issues and save both Tribes and IHS funds to resolve this matter. On behalf of our member Tribes and the coalition of Tribes that participated in the Summit, we respectfully request that you support the recommendations included in this letter.

If you have any questions or would like to discuss further, please do not hesitate to contact Jim Roberts, Policy Analyst, at (503) 347-7664 or by email at [jroberts@npaihb.org](mailto:jroberts@npaihb.org).

Sincerely,



Andy Joseph, Jr., NPAIHB Chair  
Colville Tribal Council Member

cc: Senate Members on Interior Appropriations Subcommittee

Attachment: "Tribal CSC Summit Statement of Recommendations"



# United States Senate

WASHINGTON, DC 20510

September 30, 2013

The Honorable Sylvia Mathews Burwell  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Ms. Mathews Burwell:

We support ongoing efforts to reduce the annual budget deficit, and understand the difficulty of the broader policy decisions required to make necessary funding reductions. Unfortunately we do not understand, nor do we support, the Administration's proposal to cap Contract Support Costs (CSC) owed to federally recognized tribes. These payments are necessary for tribal governments and tribal consortiums contracting with the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to provide critical services nationwide. The U.S. Supreme Court has ruled several times most recently last summer that the U.S. government must fulfill all contracts with tribal governments providing necessary medical and other social services to their members. The *Ramah* and *Arctic Slope* rulings, in particular were monumental for Indian Country. However, the Administration's response to those cases has been most troublesome.

At issue is the Office of Management and Budget's (OMB) direct action following in these recent case rulings. The President's fiscal year 2014 Budget Request unjustly demands that Congress, through the annual appropriations process, set caps on individual CSC accounts. As members of the Senate Committee on Indian Affairs, and other concerned members, we write to highlight that the authorizing committee responsible for the *Indian Self Determination and Education Assistance Act*, which provides tribes the authority to enter into contracts with the federal government has serious concerns with the Administration's approach to this issue. We view this maneuver to circumvent the Supreme Court rulings as short-sighted and ill-timed. Even more troubling is the fact that the proposed caps will hinder the ability of tribes and tribal consortiums to file claims for contract underpayments. The ability to file court claims is a necessary tool to ensure the federal government meets its obligations to our Nation's First People.


We understand that OMB has broad authority to manage the Administration's budget. Nevertheless, OMB, IHS, and BIA did not conduct tribal consultation on this proposal as recognized in Executive Order 13175, reaffirmed through a Presidential memo signed by President Obama on November 5, 2009. Furthermore, the agencies did not give the

congressional authorizing committees of jurisdiction the time necessary to hold oversight hearings and to work with tribes on a long term solution that works for all parties

involved. We strongly oppose the proposed CSC caps and urge you to withdraw the proposal. Instead, we encourage the Administration to work with tribal governments and consortiums, as well as the Congressional Committees of jurisdiction to develop a long-term solution that fulfills the federal governments' commitment to this Nation's First Peoples. In addition, tribes have requested our assistance in securing a meeting with the President to discuss this important issue directly.


We look forward to your prompt response to this matter.


Sincerely,

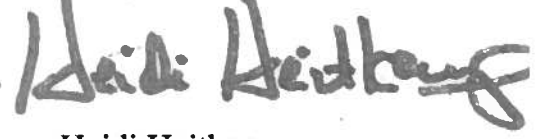
  
Mark Begich  
United States Senator


  
Lisa Murkowski  
United States Senator

  
Maria Cantwell  
United States Senator

  
Tom Udall  
United States Senator

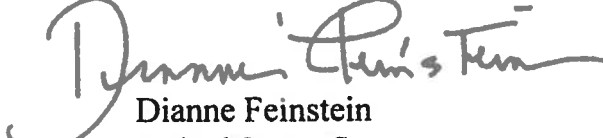
  
Tim Johnson  
United States Senator


  
Heidi Heitkamp  
United States Senator

  
Brian Schatz  
United States Senator

  
Mike Crapo  
United States Senator

  
Jon Tester  
United States Senator

  
Dianne Feinstein  
United States Senator

  
Amy Klobuchar  
United States Senator

CC:

Jodi Gillette, The White House  
Kathleen Sebelius, HHS  
Yvette Roubideaux, IHS  
Kevin Washburn, BIA  
House Appropriations Committee  
Senate Appropriations Committee





# SUSANVILLE INDIAN RANCHERIA

October 08, 2013

The Honorable Kevin Washburn  
Assistant Secretary for Indian Affairs  
MS-4141-MIB  
1849 C Street, NW  
Washington, DC 20240

Re: Contract Support Cost Workgroup Recommendations

Dear Secretary Washburn,

As you are aware from your discussions with tribal leaders at every venue this year, Contract Support Costs ("CSC") are a top priority for all Tribes. Since the National Policy Memorandum on Contract Support Costs ("CSC Policy") was signed in 2006, leading to the submission of CSC shortfall reports to Congress, Tribes have experienced a substantial increase in CSC funding along with expedited payments. While progress has been significant, there is still work to be done in order to achieve full CSC Policy implementation. To that end, the BIA Contract Support Cost Workgroup, comprised of Federal and tribal individuals as well as legal technical advisors, meets on an annual basis to provide advice and guidance on the CSC Policy.

The BIA Contract Support Cost Workgroup ("CSC Workgroup") met in Albuquerque, NM on August 20-21, 2013. The CSC Workgroup appreciated your support of our efforts to improve the BIA Contract Support Cost Policy and related reporting requirements by providing travel funds and Headquarter staff for this meeting. The importance of this matter was evident when you took time from your busy schedule to participate via teleconference. It had been over a year since the CSC Workgroup formally met and the meeting would not have happened without your efforts.

Because a number of individuals that attended had not participated in or observed a BIA CSC Workgroup meeting before, the first item of discussion was "What is the purpose of this Workgroup". Other equally important items of discussion included the following:

- Electing a new Tribal Co-Chair. Rhonda Butcher wished to step down as the Tribal Co-Chair to provide someone else with this opportunity. Ms. Butcher reviewed her duties as the Tribal Co-Chair. James Mackay from the Susanville Indian Rancheria was elected as the new Tribal Co-Chair.

- Tribal representatives communicating with the Tribes in their Region on CSC Workgroup discussions (issues and outcomes). It was agreed that CSC Workgroup members communicating with their Regional Tribes is extremely important and is intended for informational purposes and not a replacement for Tribal Consultation. Avenues of providing information to their Regional Tribes by the respective CSC Workgroup member includes meetings at the Self-Governance Conference, Regional budget meetings, and any other meetings asked for by tribal leaders.
- Can the Shortfall Report be standardized across the Regions? Each Region prepares the shortfall report in a slightly different manner. In order to be fair to everyone and provide a more accurate picture to Congress, each Region must be consistent and provide accurate data. It was agreed that any format changes to the shortfall report should be reviewed by the CSC Workgroup prior to being implemented.
- Shortfall Projections. Of significant interest to the CSC Workgroup was that the shortfall projections for future years, as calculated by BIA consultant Ron Demaray, showed a CSC Shortfall amount that was less than the Shortfall amount shown in a different calculation prepared by the House Appropriations Committee staff. The CSC Workgroup was advised that BIA might incorporate the House Appropriations Committee staff calculation in future SF reports.
- Speed of CSC Distribution. Variables on the distribution of FY 2013's Contract Support Costs included delays in the allocations from Congress due to the Continuing Resolutions, implementation by the BIA of the FBMS and ASAP payment systems, and Sequestration. Negotiations of Tribal Indirect Cost Rate Proposals with the Interior Business Center have also taken an excessively long time this year.
- Alaska Indirect Contract Support Cost (IDC) Rate of 30%. Many smaller Alaska tribes do not have current negotiated indirect cost rates and lack the capacity to develop rate proposals. BIA's current practice is to provide these tribes a lump sum for indirect costs equivalent to 30% of their direct cost base, while the lower-48 Tribes without current negotiated rates receive a default payment equivalent to 15% of their direct cost base. After some discussion on the fairness of this difference, it was agreed upon by the CSC Workgroup that because of the small size and isolation of the Alaska Tribes and Villages, the default rate of 30% is justifiable. It was also noted that the Shortfall Report for the Alaska Region needs to better reflect those Tribes that are taking the 30% rate as well as those

that have negotiated a different lump sum amount. The CSC Workgroup continues to review CSC funding for Alaska Tribes and Villages.

- 2014 CSC Budget. A discussion was held on the President's proposal of CSC being paid or capped on a contract-by-contract basis. All CSC Workgroup members and other tribal representatives strongly disagreed with that approach.
- Direct CSC Pilot Program. The CSC Workgroup continued the discussion previously held on a Direct CSC Pilot Program. The BIA CSC policy provides that Direct CSC needs are to be negotiated lump sum amounts. Due to a lack of capacity, however, the BIA for several years has estimated Direct CSC need at 15% of salaries. When the National Business Center attempted a pilot project to negotiate tribal Direct CSC lump sum amounts several years ago, they did not understand P.L. 93-638 programs and, as a result, that project was abandoned. The CSC Workgroup suggested reviving the pilot project and allow two self-governance Tribes and two contract Tribes to participate in a new pilot program. The Tribes will negotiate with the appropriate BIA representatives utilizing actual direct contract support costs to establish an individual Tribal DCSC lump sum amount. These Tribes will need to be held harmless on the negotiation of their Direct CSC rate; e.g., if the negotiated amount is below 15%, they will be allowed to keep the 15% of salaries; if the negotiated amount is higher than the 15%, they will be allowed to keep the negotiated lump sum amount.
- Changes to the BIA CSC Policy. It was noted that any substantive changes in the BIA CSC policy memorandum must be preceded by consultation as required by Article IV, § B of PSA-III entered in *Ramah Navajo Chapter, et al. v. Kempthorne*, CIV 90-0957, U.S. District Court, District of New Mexico (Doc. 1138-2, filed 5/19/2008). Some proposed format or other non-substantive changes in the BIA CSC policy memorandum, as prepared by BIA, were considered by the CSC Workgroup. The consensus was that these were not the types of changes that required consultation under the referenced PSA-III provisions.

#### **Recommendations from the CSC Workgroup:**

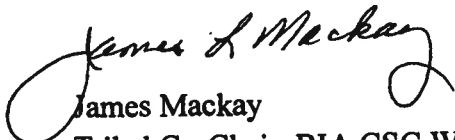
1. Co-Chair to report to the Tribal/Interior Budget Council (TIBC) on CSC Workgroup activities and be part of the TIBC budget subcommittee.
2. Clarify the Shortfall Report's definitions in Column C (total award) and Column H (exclusions). This is to be clarified by the Solicitor's Office in conjunction with Tribal Technical Advisory Attorneys.

3. Speed up funding delivery to Tribes. Funds have taken much longer to reach Tribes this year. Funding should not be subject to unauthorized processes or approvals. Using FBMS and ASAP requires a Tribe to register with SAMS and have a DUNS number. Enrollment in SAMS and having a DUNS number are not requirements of the P.L. 93-638 contracting process. The process needs to be reviewed to see if the funds can be disbursed in a more expeditious manner.
4. Sequestration. Let Tribes know in advance what may happen. Communication between the BIA and Tribes is important. Tribes are required to prepare their annual budgets and prepare their indirect cost rate proposals, but no potential funding amount is being given. It is better to err on the side of caution than to not have any potential figures and have to guess.
5. Spending plan. The BIA spending plan should be shared with all the Tribes. Again, communication from the BIA to Tribes will help in understanding the cuts/budget process. Do not put Tribes in a position to guess and speculate wrongly.
6. Pilot Program – negotiating lump sum Direct Contract Support. This was an unsuccessful program under the National Business Center, but can be successful utilizing Bureau personnel (Tribal Awarding Officials) and Tribal staff. The CSC Workgroup recommends that the Assistant Secretary send out an All Tribes letter asking four Tribes to volunteer for this pilot project (two compact Tribes and two contract Tribes). The participating Tribes should be held harmless if the negotiated amount is less than 15% of salaries.
7. Fully fund CSC. The Assistant Secretary of Indian Affairs Office should be a strong advocate on behalf of the Tribes to fully support CSC. We are not far away from achieving that goal. Please do not let the progress that has been achieved since the implementation of the BIA CSC Policy wither away.
8. Advocate the removal of CSC caps for FY 2014. There is no tribal support and no tribal CSC Workgroup support for Tribe-by-Tribe CSC caps in annual appropriations.
9. Excess CSC funds within a Region should be reallocated to Tribes within that Region, rather than being sent to the Central Office and then reallocated

to Regional Offices for disbursement. Any excess CSC funds from each Region should then be sent back to the Central Office and given to the appropriate Region/OSG to fund the Tribes with the lowest CSC funding percentage.

10. OSG Form for CSC Shortfall. This form lacks an OMB number and will be discussed with the OSG Tribes to determine if it needs to be submitted to OMB for a form number or not.
11. Review AFA CSC contract/compact language to see if the IHS language is appropriate for BIA programs. If it is, incorporate the language into each Tribe's AFA with tribal consent.
12. Regional CSC Workgroup Representatives attend Regional meetings and conferences to provide CSC updates to Tribes. Tribes are requesting that they be made aware of what is happening with the CSC Workgroup. Regional representatives and alternates can provide an update to their Regional Tribes at:
  - a. Regional Directors Meeting
  - b. OSG Meeting
  - c. TIBC Meeting
13. Alaska Tribes and the 30% Flat IDC Rate (Small and Needy). Many Alaska Tribes/Villages meet the definition of Small and Needy and do not require an annual audit. The BIA Greenbook defines Small and Needy tribes as follows: *The small tribes designation was given to tribes with a population of 1,700 or less and less than \$160,000 in recurring TPA funds in the lower 48 states and \$200,000 in recurring TPA funds in Alaska. Having funds below this threshold inhibits a tribe's ability to carry out basic tribal services and programs. A permanent solution that is aimed at creating a floor for small and needy Tribes nationwide needs to be developed.*

Respectfully,



James Mackay  
Tribal Co-Chair, BIA CSC Workgroup  
Susanville Indian Rancheria

Cc: BIA CSC Workgroup members



CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

October 9, 2013

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Sebelius:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, urges you to terminate the current effort by the Department to cap Contract Support Costs (CSC) owed to federally recognized tribes.

The Chamber has established the Native American Enterprise Initiative (NAEI) in recognition of the revolution in entrepreneurship occurring amongst the nearly three million people of American Indian and Alaskan Native heritage. Drawing on the Chamber's record of business advocacy, the NAEI seeks to remove legislative and regulatory roadblocks to their economic success. The Department's effort to cap CSCs is clearly a significant roadblock for many tribes.

On June 18, 2012, the Supreme Court ruled in favor of the tribes over CSC disputes. *Salazar v. Ramah Navajo Chapter* – a case in which the Chamber filed an *amicus* brief – found that “The Government must pay each Tribe’s contract support costs in full,” and rejected the argument that a contractor could not recover “amounts beyond the maximum appropriated by Congress for a particular purpose” as a contractor could not be reasonably “expected to know how much remained available of Congress’ lump-sum appropriation.” On August 22, 2012, this ruling was applied to the Indian Health Service (IHS) by the U.S. Court of Appeals for the Federal Circuit.

And later, on September 24, 2012, in a letter from IHS Director Roubideaux to Tribal leaders, the Tribes were assured that, even though the Department of Health & Human Services and the Indian Health Service were “not a party to the *Ramah Navajo Chapter* case,” that they intended “to follow the holding of *Ramah Navajo Chapter* when processing Tribal claims for additional CSC funding.”

However, in the last year this Administration has made efforts, without Tribal consultation, to cap CSC funding. This effort would in effect allow,

the agencies, and not Congress, [to] specify how much each Tribe would be paid—but just in contract support costs—and the agencies would do so only after the contract support cost appropriation is enacted, and after the agencies have made an assessment about how they wish to divide up that appropriation.<sup>i</sup>

The Chamber and the NAEI are strongly supportive of the Tribal position on this matter, and strongly urge the Administration to withdraw the CSC caps proposal. We also urge the Administration to work with tribal governments and the Congressional Committees of jurisdiction to find an equitable solution.

Sincerely,



R. Bruce Josten

cc: Sally Jewell, Secretary, U.S. Department of the Interior  
Jodi Gillette, Senior Policy Advisor for Native American Affairs, the White House  
Yvette Roubideaux, Acting Director, Indian Health Service  
Kevin Washburn, Assistant Secretary for Indian Affairs, U.S. Department of the Interior  
The Members of the Senate Committee on Appropriations  
The Members of the House Committee on Appropriations  
The Members of the Senate Committee on Indian Affairs  
The Members of the House Subcommittee on Indian and Alaska Native Affairs

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<sup>i</sup> Testimony of Lloyd B. Miller, Counsel, National Tribal Contract Support Cost Coalition, to the Senate Committee on Indian Affairs Hearing on the President's 2014 Budget Request, April 24, 2013.

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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200 Independence Avenue, S.W.  
Washington, DC 20201

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Sincerely,



R. Bruce Josten

cc: Sally Jewell, Secretary, U.S. Department of the Interior  
Jodi Gillette, Senior Policy Advisor for Native American Affairs, the White House  
Yvette Roubideaux, Acting Director, Indian Health Service  
Kevin Washburn, Assistant Secretary for Indian Affairs, U.S. Department of the Interior  
The Members of the Senate Committee on Appropriations  
The Members of the House Committee on Appropriations  
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The Members of the House Subcommittee on Indian and Alaska Native Affairs

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<sup>i</sup> Testimony of Lloyd B. Miller, Counsel, National Tribal Contract Support Cost Coalition, to the Senate Committee on Indian Affairs Hearing on the President's 2014 Budget Request, April 24, 2013.





806 SW Broadway, Suite 900  
Portland, OR 97205

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f 503.242.1072

HOBBSSTRAUS.COM

## MEMORANDUM

October 11, 2013

TO: Contract Support Cost Clients

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP /s/

RE: ***BIA CSC Workgroup Sends Recommendations to Assistant Secretary; Senators, U.S. Chamber of Commerce Join Opposition to CSC "Caps"; Government Shutdown Stalls CSC Settlement Discussions; Continuing Resolution Update***

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The current federal government closure has slowed, but not entirely curtailed, developments related to contract support costs (CSC).

### ***BIA CSC Workgroup Sends Recommendations to Assistant Secretary***

On October 8, 2013, the Bureau of Indian Affairs (BIA) CSC Workgroup sent Assistant Secretary – Indian Affairs Kevin Washburn a letter detailing recommendations arising from the Workgroup's recent meeting.<sup>1</sup> In the letter, a copy of which is attached, Tribal Co-Chair Jim Mackay of the Susanville Indian Rancheria sets forth the Workgroup's recommendations on several policy issues, including sequestration and funding levels, the CSC "cap" proposals, the proposed direct CSC pilot program, and projected CSC shortfalls. If you have comments on the recommendations, we would be glad to relay those to the Workgroup. Any recommendations that BIA decides to consider implementing would go out to all tribes for consultation before the agency acts.

### ***Senators, U.S. Chamber of Commerce Join Opposition to CSC "Caps"***

The chorus of voices denouncing the Administration's proposal to "cap" CSC in FY 2014 on a contract-by-contract basis has swelled to include several U.S. Senators and the world's largest business federation. In a letter to the Office of Management and Budget (OMB), a copy of which is attached, 11 Senators from both sides of the aisle blasted the proposal as "short-sighted and ill-timed." The Senators chide the Administration for failing to consult with Tribes, and they urge withdrawal of the proposal.

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<sup>1</sup> For a detailed account of the BIA CSC Workgroup meeting, please see our memorandum of August 28, 2013 and attachments.

## MEMORANDUM

October 11, 2013

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The U.S. Chamber of Commerce has also weighed in on the Administration's proposal. In a letter to Secretary Sebelius dated October 9, 2013 (a copy of which is attached), the Chamber calls the proposed caps "a significant roadblock" to the economic success of Tribes. The Chamber, which filed an amicus brief supporting the tribal position in the *Ramah* case, notes that the Supreme Court affirmed Tribes' right to full CSC funding and that IHS has vowed to follow the Court's holding. The Chamber and its Native American Enterprise Initiative conclude by urging the Administration to withdraw its CSC cap proposal and work with Tribes and Congress on a fair solution.

### ***Government Shutdown Stalls CSC Settlement Discussions***

Progress towards settlement of past-year CSC claims against the Indian Health Service (IHS), already slow, has been further delayed by the government shutdown. With most agency staff and attorneys furloughed, a number of settlement meetings scheduled for early October were cancelled, including a mediation session in Washington, D.C. involving nine tribes and tribal organizations (eight of them Hobbs Straus clients). Another of our clients settled several CSC claims before the closure but now faces delays in payment due to IHS's current inability to draft the necessary paperwork. We expect that CSC settlement discussions and implementation will resume promptly once the Government is back to work.

### ***Continuing Resolution Update***

The federal government continues to be in a partial shutdown as Congress has been unable to pass a continuing resolution (CR) to provide FY 2014 funding to federal agencies until or in lieu of enacting FY 2014 appropriations bills. The House passed H. J. Res. 59, which sought to defund the Affordable Care Act (ACA) in addition to extending funding of federal agencies through December 15, 2013. The Senate amended H. J. Res. 59 to, among other things, extend funding through November 15 and remove the language to defund the ACA. As we previously reported, neither version of H. J. Res. 59 contained the CSC cap language included in the President's Budget and recommended by the OMB to be included in the CR. Since then the House has passed a number of targeted or "mini" CRs that would open specific federal agencies or programs, such as Head Start, Veterans Affairs, National Parks, etc., but the Senate has refused to act on all but the ones to reinstitute military pay and military survivor benefits.

In the past few days differences in the focus of the House and Senate Republicans have become more evident, and with the debate becoming more focused on raising the national debt limit and less on derailing the ACA. The House GOP's latest plan, not yet introduced as a legislative measure, would raise the debt limit for six weeks without any policy riders (a "clean" debt limit proposal); it would not, however, include any CR language that would re-open the federal government. The proposal would be contingent on the President and Democrats agreement to negotiate on the CR and a long-term debt limit increase during the six-week period. The Senate Republicans are working on a plan

# MEMORANDUM

October 11, 2013

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that would not only provide a six-month CR but also provide a two-month debt ceiling increase. It is uncertain when a CR will be enacted.

## *Conclusion*

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