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TRIBAL CONSULTATION MEETING

ON

REVISING TRIBAL SHARES FORMULAS

FOR

THE REAL ESTATE APPRAISAL PROGRAM

Office of the Special Trustee for American Indians

Tuesday, August 18, 2009  
9:15 a.m.

National Indian Programs Training Center  
1001 Indian School Road, Room 234  
Albuquerque, New Mexico

REPORTED BY: ELIZABETH HURST-WAITZ, NM CCR #099, RMR  
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I N D E X

Page

Opening Remarks and Introductions - 3  
 Debbie Meisner  
 Director of Administrative Operations  
 Office of Appraisal Services (OAS)  
 Albuquerque, New Mexico

Slide Presentation on Tribal Shares Project - 5-36  
 Eldred Lesansee  
 Deputy Chief Appraiser  
 Office of Appraisal Services (OAS)  
 Albuquerque, New Mexico

Lee Frazier  
 Management Analyst  
 Office of External Affairs (OEA)  
 Washington, D.C.

Revising Tribal Shares for the Appraisal Program: 36-62  
 Open Questions/Discussions with OAS and OEA  
 Representatives

Morning Session concluded 62

Reconvene for Afternoon Session 63

Adjournment 63

REPORTER CERTIFICATE 64

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1                                 Reporter's Disclaimer:  
2     Inaudible portions of this transcript result from the lack  
3     of a working amplification system. Although microphones  
4     were provided to the participants, the amplification  
5     system was not engaged at the time of the meeting.

6  
7                     MS. MEISNER: I guess we'll get ready to get  
8     started. Good morning. Thank you for being here. My  
9     name is Debbie Meisner. I'm with the Office of Appraisal  
10    Services here in New Mexico. (Inaudible).

11                    (Off the record.)

12                    Again, my name is Debbie Meisner. I'm with the  
13    Office of the Special Trustee for American Indians, Office  
14    of Appraisal Services here in Albuquerque. I would like  
15    to present the other group that's here working with us on  
16    this project. We've got Eldred Lesansee, who is the  
17    Deputy Chief Appraiser.

18                    MR. LESANSEE: Good morning.

19                    MS. MEISNER: Lee Frazier; he's with the Office  
20    of External Affairs out of Washington, D.C.

21                    Frank Perniciaro in the back; he is also with the  
22    Office of External Affairs in Albuquerque.

23                    And then J.P. Barham, who is the Director of  
24    External Affairs in Washington, D.C.

25                    We're really very happy that you're here. We're  
26    very pleased. This project is very special to us. We  
27    really believe that it's something that's been a long time

1 coming, and we really are here just to get your ideas, see  
2 what you might have to think, and also present to you some  
3 ideas that we've thought of over time as we've been  
4 working on this project.

5           As you'll see when they start the presentation,  
6 tribal shares haven't been changed since 1995, and  
7 everyone knows that the world in Indian Affairs and  
8 appraisals has changed dramatically in the last 14 years,  
9 and so we really hope to have a positive interaction here,  
10 and we welcome you all to speak, ask questions.

11           We do have a court reporter, so if you do have a  
12 question, please state your name for the record so that we  
13 can capture that information.

14           Once the consultations are done, all the  
15 transcripts will be posted on the OST Web site, and then  
16 we'll be putting together some possible suggestions for  
17 the Acting Special Trustee.

18           Eldred asked that I just give you a little bit of  
19 information on the appraisal workload so far this year.  
20 The group has been very, very busy. Back in March the  
21 appraisers were given a challenge to try to complete and  
22 clear up the backlog from -- well, which has been going on  
23 forever and ever and ever. And at the end of the second  
24 quarter, the backlog is 920 appraisal requests. At the  
25 end of June, the appraisal backlog was 65, and so the

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1 groups did a wonderful job of going out there and cleaning  
2 up.

3           You still can't hear me? Can you hear me? No?  
4 Can you hear me now?

5           (Off the record.)

6           MS. MEISNER: But also so far this year we have  
7 had 3100 requests for appraisal reports. We've completed  
8 and transmitted 5700 to the client, and the pending  
9 workload at the end of June was 1,423.

10           So with that, we'll get started. We would again  
11 like to invite your questions as we're going along. Or do  
12 you want to wait?

13           MR. LESANSEE: Probably to the end.

14           MS. MEISNER: Okay. If you can hold your  
15 questions to the end. And again, if you will provide your  
16 name when you do ask questions. Thank you.

17           MR. LESANSEE: Can you hear me? Is it okay  
18 without this mike here?

19           Well, good morning. I'm glad, I'm very pleased  
20 that you're able to come today for the Tribal Consultation  
21 on appraisal tribal shares. This is the sixth of the  
22 series of tribal consultations on tribal shares that we've  
23 scheduled this year. We started back in Oklahoma City on  
24 June 30th, and then we were in Rapid City on July the  
25 14th. And then we had our third tribal consultation on

1 July the 29th in Portland, and we were in Billings on  
2 August the 4th. We just got done with Anchorage on the  
3 13th.

4           The comments and recommendations, suggestions and  
5 so on that we've picked up along the way, we're carrying  
6 them forward, and in the open questions and answers, we  
7 hope to share that with you. As you present your  
8 questions to us, we'll share some of the comments that  
9 we've received so far from the tribes.

10           We've had varying participation throughout the  
11 different locations, but we've got -- one thing that's  
12 been consistent is very good comments. I mean, there has  
13 been good recommendations. And like Debbie said, I think  
14 we'll have a lot of information to consider after this  
15 final consultation, and determine what course of actions  
16 to take after this last consultation.

17           I think the main thing that we hear is that there  
18 is not enough funding to support the Appraisal 638  
19 Programs. That seems to be the common concerns from the  
20 tribes. And like Debbie mentioned, these tribal shares  
21 were calculated in 1995, and they haven't been changed  
22 since that time. Tribal shares for appraisals have not  
23 been recalculated in step with increased regional  
24 appraisal budgets. And over the seven years that the  
25 Office of Appraisal Services or the Appraisal Program has

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1 been in OST, we've been hearing from tribes, through the  
2 annual funding agreements, that there is insufficient  
3 amount of funding in the Appraisal Program to adequately  
4 run it to meet the appraisal needs and so forth.

5           Like last week in Alaska, we heard that some of  
6 the tribes and consortiums and corporations up there are  
7 holding back doing appraisals because there is not enough  
8 funding, especially if they have to contract. Contracting  
9 is very expensive up there, and they may have enough  
10 funding to do maybe ten appraisals, and there might be an  
11 additional need, but the budget doesn't support that. So  
12 that's another thing that I guess needs to be considered,  
13 I guess, in the coming weeks or months when we discuss the  
14 course of action and what the recommendations would be  
15 regarding tribal shares.

16           As a result of the comments, OST is working on  
17 this project to revise the funding of the tribal shares to  
18 calculate or to look at, to study the current tribal  
19 shares. We've got approximately five different tribal  
20 shares formulas across the 12 regions, and we'll be  
21 discussing that later on in the presentation.

22           The purpose of the Tribal Consultation is to  
23 discuss ideas in developing new tribal shares formulas for  
24 the appraisal function and evaluate the existing tribal  
25 shares formulas that will be used to apportion the funds

1 to tribes performing, or interested in performing, the  
2 appraisal preparation function pursuant to 93-638.

3           We're hopeful that these new tribal share  
4 formulas ensure uniformity and transparency in determining  
5 tribal shares funding and residuals to meet the inherent  
6 federal functions.

7           MR. RICHARD MILANOVICH: What is that?

8           MR. LESANSEE: Well, actually, it's the residual  
9 functions. It's residual functions currently in the  
10 appraisals; it's the review and approval function.

11          MR. RICHARD MILANOVICH: It sounds like a  
12 euphemism to me.

13          MR. LESANSEE: So in 1995 BIA developed  
14 region-by-region formulas to allocate tribal shares for  
15 the appraisal program. Appraisal programs transferred  
16 from BIA to OST in 2002. BIA awarding officials and OST  
17 agreed to continue the region-by-region formulas to  
18 maintain continuity.

19          And one of the other things that occurred at that  
20 point in time was there was a decision back in the '90s to  
21 freeze the tribal shares allocations, so it's been static  
22 since that point in time for the tribes that entered the  
23 program early on.

24          MR. FRAZIER: Can everyone hear me okay? All  
25 right. When we started off in this project, one of the

1 first things we did is we went around the country  
2 gathering information on the existing tribal share  
3 formulas. And I think everyone knows this, but what we  
4 mean by tribal share is the amount of money you get if you  
5 contract or compact the program, the amount of money you  
6 get from either OST or BIA, depending on whether it's a  
7 contract or a compact; the amount of money you get to run  
8 the program.

9           That's true of appraisals or any other  
10 compactable or contractable program. It's just the  
11 terminology we use, is "tribal share."

12           So when we looked at the appraisal program and  
13 looked around the country, as Eldred said, back in 1995,  
14 they pretty much left it up to the regions. They said,  
15 "You decide the formula or the method you want to use to  
16 divide up these shares."

17           One of the methods they came up with is equal  
18 division. They basically just took the available regional  
19 budget, which is the regional budget minus the residual --  
20 and we'll get back to what the residual was in a second --  
21 and they just divided it up by the number of tribes. If  
22 you had ten tribes in the region, you divided by ten.  
23 This is actually the method that Midwest uses right now.  
24 They just take the available regional budget, divide it by  
25 the number of tribes, that's it. That's what your tribal

1 share is. They don't look at workload. They don't look  
2 at anything else. It's just an equal division.

3           A second division -- and it's like this little  
4 bullet says there: It's easy to calculate, but it's  
5 probably not in compliance with the statute. And we'll  
6 get back to why we think it may not be in compliance with  
7 the statute later on.

8           The second method is the land-based division.  
9 Very simply, this takes either acreage or parcels, town  
10 sites; some measure of the land that your tribe has and  
11 uses that as the primary basis for dividing up the shares.  
12 If you've got a big land base, you're going to get a  
13 larger share. Small land base, smaller share.

14           And I think the presupposition of that is that if  
15 you have a large land base, you're more likely to have  
16 more appraisal activity. But as we said: When we've  
17 looked at the numbers, there really is no strong  
18 correlation between land-based and appraisal activity.

19           Population-based division: It's similar  
20 mathematically, but it's based on your tribal membership.  
21 So again, a tribe with a lot of people in it would get a  
22 larger share. Again, the presupposition is that a more  
23 populous tribe is going to have more appraisal activity.  
24 But as we've looked at the numbers, there is no strong  
25 correlation between the population and the appraisal

1 activity.

2           Workload-based division: From what we've seen,  
3 this appears to have the strongest correlation with  
4 appraisal needs. And this would be looking at what's been  
5 the appraisal activity in the past; like whether you look  
6 back one year, two years, three years, seven years. And  
7 the presupposition here is that the future is going to be  
8 pretty much like the past. The appraisal work that you've  
9 done in the recent past, relatively recent past, we think  
10 that that is going to be the best indication of what your  
11 appraisal needs are going to be in the future, and that  
12 should be the best way to divide up the tribal shares.

13           Finally, there is what we call a hybrid division,  
14 and by "hybrid" we just mean we use different components.  
15 Rather than use just one of these factors, we'll use maybe  
16 workload and population and land base, or workload and  
17 equal division. And then those components can be  
18 weighted, which we can say, for example: Well, we think  
19 workload should count for 80 percent of the share, but 20  
20 percent of it is going to be equal division. Or one-third  
21 is going to be population, one-third workload, one-third  
22 land base. So that's what we call the hybrid division.

23           And then the bullet up there, we think this may  
24 have some correlation with appraisal needs if the workload  
25 component is used.

1           MR. LESANSEE: Okay, the reasons for revising:  
2 Tribal shares, like I mentioned before, were calculated in  
3 1995 and have not been changed since that time. Tribal  
4 shares have not been recalculated in step with increasing  
5 regional budgets for appraisals. And there may be  
6 inequities between tribes that have contracted or  
7 compacted at different times. Those that contracted and  
8 compacted back in '95 versus the ones that entered the  
9 program recently, there might be different amounts,  
10 because the funding for sure, for certain, is different.

11           I mean, in 1995 the appraisal budget was  
12 \$3.4 million, and today, or currently in more recent  
13 times, it's somewhere in the area of \$8.6 or \$8.9 million.  
14 So there is a big difference in the amount of money that  
15 was considered during the negotiations.

16           Benefits for revising: Revised formulas will  
17 ensure uniformity and transparency in determining tribal  
18 shares and funding residual for the inherent federal  
19 functions, which again is review and approval.

20           MR. FRAZIER: This is the statute, the primary  
21 statute that we believe is the controlling language for  
22 determining a tribal share. And again, this is from the  
23 Title I part of 93-638, so this applies to contracts.  
24 There is basically the exact same language in the Title IV  
25 part of the statute. And I will just read you the text of

1 the law, and then we can talk about what we think it  
2 means:

3           "The amount of funds provided under the terms of  
4 the self-determination contracts or compacts entered into  
5 pursuant to this subchapter shall not be less than the  
6 appropriate Secretary would have otherwise provided for  
7 the operation of the program or portions thereof for the  
8 period covered by the contract."

9           And historically what we have interpreted this to  
10 mean is if you are a direct service tribe, the amount of  
11 money the Secretary was spending for a particular program,  
12 function, ESFA -- the amount of money that Secretary  
13 otherwise would have spent on you if you were a direct  
14 service tribe, you receive not less than that same amount  
15 of money.

16           So for the appraisal program, if the Secretary  
17 would have spent \$5,000 providing direct service appraisal  
18 program functions to you, your tribal share should not be  
19 less than \$5,000. Is that clear? And this is the statute  
20 and this is the law that we believe is controlling, is  
21 sort of the baseline for us in looking at how we should  
22 allocate these funds.

23           Okay. Now we're looking at regulations, and I'm  
24 sure some of you know this, but regulations are also the  
25 law, but they are -- after Congress passes a statute, the

1 Department comes back later and sort of fills in to  
2 amplify, what does the statute mean? How do we actually  
3 carry out this statute? That's what regs are, but it's  
4 all the law.

5           So one of the important regulations from our  
6 perspective is found -- it's in here. This is not the  
7 newest version, but it's in the CFR. It's 25 CFR, Section  
8 1000.94. I'll just read the text:

9           "BIA residual funds" -- and for our purposes we,  
10 OAS, inherited the appraisal program from BIA, so this  
11 language pertains to OST now that OST has control of the  
12 appraisal program. "BIA residual funds are the funds  
13 necessary to carry out BIA residual functions. BIA  
14 residual functions are those functions that only BIA  
15 employees could perform if all tribes were to assume  
16 responsibilities for all BIA programs that the Act  
17 permits."

18           And as Eldred said before, those residual  
19 functions are the functions that the Department deems to  
20 be inherently federal or inherently governmental. In  
21 other words, those are the functions that we may not  
22 contract out to anyone. We may not contract them out to a  
23 private entity, a commercial entity. We may not contract  
24 them out to a tribe. They must be performed by a  
25 government employee. And for the appraisal program, the

1 only inherently federal function that has been identified  
2 is the review and approval of appraisal reports.

3           Another important section is right after it,  
4 25 CFR, Section 1000.95, and this pertains to a report  
5 that's supposed to be going out annually:

6           "Residual information will consist of residual  
7 functions performed by the "BIA" -- or OST -- "a brief  
8 justification why the function is not compactable, and the  
9 estimated funding level for each residual function. Each  
10 regional office and the central office will compile a  
11 single document for distribution each year that contains  
12 all the residual information of that respective office."

13           This part of the regs, in the past we have not  
14 been in compliance with. Starting next year we plan to  
15 come into compliance with this regulation. And basically  
16 what it means is by March 1st of every year we will be  
17 giving every tribe the residual information, which will  
18 basically identify what we have identified as the  
19 inherently federal function; why we believe it is not  
20 contractable or compactable; the funding levels associated  
21 with that inherently federal function. It will basically  
22 be like a mini report that will go out to you every year,  
23 saying this is the residual information, so that you can  
24 make -- so you have that information for your decisions.

25           Currently the residual for the appraisal program

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1 is 20 percent. This was a level that was determined by  
2 the Chief Appraiser, I think, about three years ago, was  
3 it?

4 MR. LESANSEE: 2004 or 2005.

5 MR. FRAZIER: Yeah, 2004 or 2005 they determined  
6 that 20 percent was the appropriate level of the residual  
7 for the appraisal program. In the future we haven't yet  
8 decided what we believe should be the residual level, what  
9 percentage.

10 And again, in some regions, historically when  
11 they negotiated the tribal shares back in 1995, in some  
12 regions it was not a percentage; it was a flat level, like  
13 it was \$80,000 or \$100,000. In 2004 and 2005 they changed  
14 that residual to be a percentage so that it could float  
15 with the budgets. As the budgets move up, that residual  
16 can also grow a little bit.

17 And let me move on to the next one. I'll let you  
18 talk about this one, Eldred.

19 MR. LESANSEE: Yes. This process, this  
20 presentation or slide gives you a general description of  
21 the appraisal process. It begins with the appraisal  
22 request, which starts with the tribal or BIA agency  
23 office; the BIA line official approving the appraisal  
24 request; and then the appraisal request is submitted to  
25 OES.

1           In the second bullet, then the report is prepared  
2 or developed and reported and then submitted to OES for  
3 review and approval. And that's where the inherent  
4 federal function is. Then it's funded by the residual,  
5 and the process ends here with the transmittal of the  
6 product to the client.

7           But what's also demonstrated by the turquoise  
8 bullet is that the appraisal report development, that's  
9 actually appraisal development and reporting is your  
10 commercial activity. And then the next or the red bullet,  
11 the appraisal report review and approval is your inherent  
12 federal function or the residual functions.

13           And the other thing that is good to note is that  
14 if there has to be a balance or if there has to be enough  
15 resources in the appraisal development and reporting  
16 function, as well as the appraisal review and approval  
17 function, or else you might have a backup. You'll have  
18 inefficiencies or ineffective process, because if all the  
19 funding is in the appraisal development and reporting,  
20 then you might not have enough review resources and you'll  
21 have a backup. And vice versa, too, as well: If you  
22 don't have enough funding in the appraisal development  
23 activity or reporting activity, then the process is  
24 inefficient. You won't get the productivity; and it  
25 affects, eventually affects, the real estate transactions,

1 the schedules and time lines and so forth.

2           MR. FRAZIER: Let's go ahead and jump into one of  
3 the ideas, one of the methods, and kind of work through  
4 the details so that everybody understands how these work.  
5 This is the first idea, is a workload-based formula, and  
6 there is a little bit of math involved here, but it's not  
7 too complicated.

8           The way you work out a tribal share under a  
9 workload-based formula is you take the regional budget and  
10 then you subtract the residual. Now, currently that's 20  
11 percent. So, like, if it was a million dollars, you would  
12 take off 20 percent, \$200,000. You would be left with an  
13 available regional budget of \$800,000. You multiply that  
14 by this thing right here, which is the average tribal  
15 workload divided by the average regional workload. So  
16 it's a ratio: What's the pro rata share of your tribe  
17 relative to your region? Is your tribe doing 10 percent  
18 of the appraisal work? Is your tribe doing 25 percent?  
19 Whatever that ratio is, you multiply it by the available  
20 regional budget, and that would be your tribal share.

21           Now, when we say "average," one of the things  
22 that has to be determined is how far back are you going?  
23 Are you going back one year? Two years? Three years?  
24 The shorter the period of time you go back, if you only  
25 use -- well, it wouldn't be an average. Let's say one

1 year average. If you only used one year of appraisal  
2 activity, that's going to be very responsive to demand  
3 spikes, so that if you had a particularly heavy year in  
4 appraisal work in the previous years, your tribal share is  
5 going to jump up. And I say heavy relative to your  
6 region. If your entire region had a heavy year and you  
7 had a heavy year, it might not jump up. So I mean a heavy  
8 year relative to your region. That would cause your  
9 tribal share to jump up.

10           So I guess if you think your appraisal activity  
11 is going to increase, that's a good thing. The problem is  
12 that only a small average, just a one-year average, even  
13 though it's responsive, it's going to lead to some spiking  
14 in your demand curve. It's going to be hard to predict.  
15 So if it's five years and then ten and then one and then  
16 15, it's going to be very hard for your budget people to  
17 figure out what is your tribal share going to be for the  
18 next year.

19           In order to smooth out that demand curve, we can  
20 lengthen it. We can say: Okay, we're going to use a  
21 three-year average. We're going to use a seven-year  
22 average. That's going to give you a much smoother demand  
23 curve and it's going to be much more predictable. The  
24 down side of that is it's not going to be as responsive to  
25 a one-year increase.

1           So, you know, you had been going along five  
2 years, five years, five years; you jump up to ten -- well,  
3 excuse me. Let's say you had five appraisals, five  
4 appraisals, five appraisals, then you jump up to 15  
5 appraisals in one year, because it's like a five-year  
6 average, that one-year increase is not going to -- it will  
7 affect your tribal share a little bit, but it's not going  
8 to be as responsive as a one-year average.

9           This is an important point right here: OST  
10 intends for this formula to be dynamic; that is, adjusted  
11 every year. As Eldred mentioned before, the tribal shares  
12 that almost all of you are getting right now, probably  
13 everyone in this room if you contract or compact, it was  
14 calculated in 1995 and it has not changed.

15           We would like this to be dynamic. That is, every  
16 year we will look at the previous year's workload,  
17 previous year's appraisal activity, and we will make  
18 adjustments.

19           The workload-based formula is the type of formula  
20 that is now used in Eastern Oklahoma and the Northwest  
21 Regional Offices, so there are regions right now that are  
22 using the methodology that is purely workload-based. I  
23 think Northwest uses seven-year average.

24           MR. LESANSEE: Yes, they do.

25           MR. FRAZIER: And Eastern Oklahoma, five-year

1 average. So the workload-based formula is currently being  
2 used in some regions.

3 MR. LESANSEE: I'd like to make a comment that  
4 one of the questions that came up in some of the tribal  
5 consultation sessions was: What is the definition of a  
6 workload? And I think it was a good question, because  
7 when we identify the definition of workload, there has to  
8 be a consistent counting from region to region, as well.

9 Whether you count appraisals -- is it appraisals?  
10 Real estate appraisal consultations? Is it, like you say,  
11 you do a market study for 100 parcels, do you count one  
12 market study or do you count a hundred appraisals? So  
13 consistency is going to be key as far as identification of  
14 workload in order to apply this formula.

15 And the other thing is the dependencies. I mean,  
16 the surface appraisals depend on timber cruises, mineral  
17 evaluations. We depend on timber cruises from tribes to  
18 the BIA, and we depend on the Office of Mineral  
19 Evaluations for the mineral evaluations, and so if those  
20 don't come in, then our process gets backed up, too, as  
21 well. So, and then the workload may be affected where the  
22 tribes are responsible for the function. They may be  
23 facing the same issues. There is dependencies along the  
24 process, and if the dependencies are slow in delivering  
25 their product to the surface appraisers, that may affect

1 the amount of work that you do on an annual basis.

2           MR. FRAZIER: And to get back to that issue about  
3 the trickiness of appraisal activity and how do we measure  
4 that, one of the things that came up in Alaska, also, that  
5 we are going to have to think about is that if you have  
6 two tribes in a region, one is a direct service tribe and,  
7 say, one is a compacting tribe, the direct service tribe,  
8 everything that they think is a legitimate appraisal  
9 request, they're going to forward to OAS. That doesn't  
10 mean that they think everything is going to get done, but  
11 they're going to send everything down the pike.

12           And so, for instance, I think of {BB&A} --  
13 Bristol Bay in Alaska. They're a direct service tribe  
14 with regard to appraisals. They send everything to OAS.

15           If you get a compacting tribe, they have a budget  
16 that they have to work with. They get a tribal share and  
17 they may supplement that with some of their own money, but  
18 when they're looking at their appraisal requests or their  
19 appraisal needs, they don't deal with everything. They  
20 have to prioritize.

21           So they'll say: I've got 15 things that I could  
22 maybe do appraisals on. I've got money for ten. I'm  
23 going to do ten.

24           So if we look at their appraisal needs, what  
25 they're reporting, the direct service tribe, their

1 appraisal activity is way up here, and the compacting  
2 tribe, their appraisal activity is kind of artificially  
3 lowered because they are doing it themselves to meet their  
4 budget needs. And if we're trying to get a level playing  
5 field, we've got to find some way to make sure that the  
6 direct service tribes and the contracting or compacting  
7 tribes, that we're using a measure that's not artificially  
8 harming one of those groups.

9           This is a hypothetical workload-based formula.  
10 A hypothetical region, very small, only three tribes; and  
11 this is just to show you how the math works. Tribe A --  
12 this will be a three-year average, by the way, fiscal year  
13 2005 through 2007.

14           If you look at Tribe A, they've got a pretty  
15 consistent and high demand relative to region. So they've  
16 got 35 appraisal requests or 35 appraisals in one year,  
17 then 30, then 31. They're pretty level.

18           Tribe B, you can see their activity is ramping  
19 up. They start off with zero, then two, then ten. Their  
20 activity is really going up.

21           Tribe C, you can see here their activity is going  
22 down. They started with 20, went down to ten, went down  
23 to six. So Tribe B and Tribe C, if you look at them  
24 dynamically, they're kind of going in two different  
25 directions.

1           So how will we calculate the tribal share for  
2 this particular year, which would be FY 2008, using the  
3 previous three years? The math is actually pretty easy.  
4 You take the regional budget; let's say it's \$100,000.  
5 You subtract the 20 percent residual, which is \$20,000.  
6 This leaves you an available budget of \$80,000.

7           If you look at the regional average, you  
8 calculate that by adding up all those numbers, and again  
9 it's a three-year average. You divide by three. This  
10 gives you a regional average of 48.

11           Then you take each tribe individually. Tribe A's  
12 three-year average is 32. And you divide 32 by 48 and you  
13 get 66.67 percent. In other words, Tribe A over three  
14 years is doing about two-thirds of the appraisals for that  
15 region.

16           You take this percentage, 66 -- well, junior high  
17 math -- .6667. You multiply it by the available budget.  
18 You get a tribal share of \$53,336. Does everybody follow  
19 that? Do you want me to go through it again?

20           Tribe B, the same thing: Their three-year  
21 average was only four. Now, if you look here in FY 2007,  
22 they did ten, but the three-year average is only four.  
23 You divide four by 48; it's 8.33 percent. Multiply the  
24 percentage times the available regional budget. They get  
25 a tribal share of \$6,664.

1           Tribe C, the same math. They get a tribal share  
2 of \$20,000.

3           Now, one of the things we want to show you is  
4 how, if we were to make this methodology dynamic, how that  
5 could affect these shares. Let's go forward one year and  
6 assume that in FY 2008 the demand is going to stay the  
7 same as it was in FY 2007. Now, you look at Tribe A. It  
8 doesn't affect them too much. They're pretty consistent  
9 in their activity, so their tribal share is going to be  
10 about \$54,000. It was \$53,000. They're going to stay the  
11 same.

12           But now compare Tribe B and Tribe C. Again,  
13 Tribe B ramped up, and we're going to assume they're going  
14 to stay at that level. Tribe C is coming down. We're  
15 assuming they're going to stay at that level. Look what  
16 happens to their shares.

17           Tribe B, remember they only got \$6600. Their  
18 three-year average now has gone up to 16 percent and their  
19 tribal share has gone up to \$12,000.

20           Tribe C, remember they're curving down, and so  
21 relative to the region, they've come down and their tribal  
22 share has gone from about \$20,000 down to \$12,000.

23           So that's one thing to bear in mind about a  
24 workload-based methodology: That if you're ramping up,  
25 your tribal share could increase, but if you're going down

1 relative to your region, your tribal share could decrease.

2           MR. LESANSEE: Okay, equal division. With equal  
3 division, your change in the workload is not a factor.  
4 What you're primarily concerned about is how many tribes  
5 you have in the region. In this case of the hypothetical  
6 example we have three tribes, so they split the \$80,000  
7 funding available to the tribes, and you multiply the  
8 \$80,000 to the one-third, because each of the tribes  
9 represent one-third of the pie. So one-third times  
10 \$80,000, and you get \$26,667. And the same with Tribes  
11 B and C.

12           And the problem with equal shares is that even if  
13 Tribe B and C don't have very much appraisal activity,  
14 they get the same amount. Even if it's zero, they still  
15 get the same amount set aside for them. So then it takes  
16 some of the money away from, say, maybe Tribe A, that's  
17 very active. Then they only have approximately \$27,000 to  
18 work with the whole year. That's the problem with equal  
19 share.

20           Land-based. Land-based formula, the assumption  
21 is, like Lee mentioned earlier, the more acreage you have;  
22 and in the case of Alaska, the more parcels you have, the  
23 more townships, the assumption is that you'll have more  
24 appraisal needs.

25           The way this formula works is that you have

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1 Tribe A with 1,000 acres; they have the most acres. You  
2 have Tribe B with 500 acres. Tribe C with 100 acres;  
3 they've got the least amount. You can see the percentage  
4 going down as their acreage goes down, too, as well, and  
5 it reflects on the amount of funding they receive.  
6 Tribe A with 1,000 acres has \$50,000 tribal share.

7           And the way we get to the percentage is you  
8 divide the 1,000 acres by the total regional acreage  
9 that's in trust and restricted status. So 1,000 acres  
10 divided by 1600 will get you 62.5 percent. You multiply  
11 that by the \$80,000 and you'll get your \$50,000 funding  
12 amount.

13           The land-based formula, I guess an example of  
14 land-based formula where it may not have direct  
15 correlation with the appraisal need, a good example would  
16 be probably the Navajo Nation reservation. It's one of  
17 the biggest reservations in the country, and it's probably  
18 the third lowest as far as workload on an annual basis.  
19 And it's probably closer to the Pacific Region, which we  
20 know -- I mean, the reservation has -- what is it, Will?  
21 about 110 tribes?

22           MR. WILL ARMSTRONG: It's about 103 right now.

23           MR. LESANSEE: 103?

24           MR. WILL ARMSTRONG: Yeah.

25           MR. LESANSEE: But the acreage is probably a lot

1 less (inaudible) compared to Navajo, but the workload is  
2 about, consistently, almost the same. So there is really  
3 no direct correlation to the amount of acreage you have.  
4 I think it's more based on economic factors -- location,  
5 location, location, when you speak about real estate. The  
6 opportunity. I guess the proximity to infrastructure and  
7 all the other stuff that creates value. I think that  
8 might be a better factor and a stronger factor on how much  
9 appraisal would be, because there is more opportunities to  
10 put the land into economic development or some other uses.

11           The next formula, population-based: It's pretty  
12 similar. The assumption there, too, again, is that the  
13 more people you have, there should be more appraisal  
14 needs. And that's the same situation, is that the more  
15 population, that should trigger more transactions.

16           And that might be the case in allotments, where  
17 you have highly fractionated property. That might be the  
18 case; population might be a factor. But if you have  
19 primarily tribal lands, there might not be a direct  
20 correlation on the amount of people that are enrolled in  
21 the tribe, the amount of membership versus the amount of  
22 appraisal need.

23           And it works the same way: Percentage tribal  
24 shares, the way it's developed is 3,000 membership divided  
25 by the total regional population of 6500, you get 46.15

1 percent. And you apply that to your available budget of  
2 \$80,000 and you'll get your tribal share of \$36,920. This  
3 is for Tribe A.

4 And you do the same thing for B and C, and you'll  
5 get your dollar tribal share amounts. But there again,  
6 there may not be a direct correlation to the amount of  
7 appraisal needs.

8 MR. FRAZIER: This is the hybrid formula, and  
9 this is not -- I know it may look a little complicated.  
10 It's not as complicated as it looks. What you do -- and  
11 this again is a hypothetical example. We took a hybrid  
12 and we said, Let's say it has three components: Land,  
13 population, workload. The number you see in parentheses  
14 below them is weights that we've attached to those  
15 components, and those weights add up to 1.0; .25 plus  
16 .25 plus .50 equals 1.0.

17 The assumption we've made here is that workload  
18 is probably the most important factor, so we're going to  
19 give it half the weight. We're going to give it 50  
20 percent of the weight. Population, we're going to give  
21 25 percent of the weight. Land, we're going to 25 percent  
22 of the weight. But again, that's arbitrary for our  
23 example. You could give equal weight -- you know, .333 --  
24 to each one of those.

25 And here's how the math would work. You look at

1 Tribe A. Remember, their land was 62.5 percent of the  
2 region. You take that 62.5 percent or .625. You multiply  
3 it by .25, the weight; and for this component you get  
4 .1563.

5           You go to population. Remember, Tribe A had  
6 46.15 percent of that region in population. You multiply  
7 that times .25; you get .1154.

8           You go to workload. Remember, they did  
9 two-thirds of the workload. You multiply that times .5,  
10 the weight, and you get .3334.

11           Then you add together these right-hand  
12 components: .1563 plus .1154 plus .3334 equals .6050.

13           You do the same thing with all three of the  
14 tribes. And if you notice, if you add these numbers  
15 together, they add up to 1.0. So these essentially are  
16 percentages. So using this hybrid formula, Tribe A is  
17 going to get 60.50 percent of the shares, Tribe B is going  
18 to get 19.67 percent, and Tribe C is going to get 19..83  
19 percent.

20           And then you just take these percentages -- these  
21 are essentially percentages. You multiply them times the  
22 available budget. Tribe A will get a tribal share of  
23 roughly \$48,000, and Tribe B and Tribe C will both get a  
24 little more than \$15,000.

25           Is the math of that pretty clear to everyone? Do

1 you want me to go over it again? Or is that pretty  
2 straightforward?

3 MR. LESANSEE: I guess I can cover some of the  
4 pros and cons.

5 MR. FRAZIER: Yes.

6 MR. LESANSEE: The pros: It gives consideration  
7 to all tribes in the region regardless of the amount of  
8 land they own, regardless of population size, regardless  
9 of the workload. Because, like for instance, in the  
10 Southwest Region, they started with five components, which  
11 was land base, population, appraisal workload, realty  
12 workload, and equal share.

13 Equal share kind of gives at least 1/25th of the  
14 pie to each of the tribes, because there is 25 tribes in  
15 the Southwest, so each of the tribes gets a share of  
16 one-fifth of the component, I guess.

17 But the cons of this formula is that it's  
18 difficult to compile the statistics to apply the formula.  
19 The land information is restricted -- trust-restricted  
20 property is kind of hard to gather, and the population  
21 statistics are kind of hard. The tribes' enrollment  
22 offices, they track their numbers, and the BIA tracks  
23 their numbers, and sometimes they're not always  
24 consistent, so you have to do some reconciliation in the  
25 land base and population totals.

1           And then the workload. You know, that's one  
2 thing that the Office of Appraisal Services had control  
3 over, as far as how much workload was done on an annual  
4 basis. But we had some difficulty in gathering the realty  
5 workload, so we had to drop that component out of the  
6 formula, so we ended up with four. An equal share was,  
7 you know, you have 25 tribes, so you divide one over 25,  
8 so that was easy to calculate.

9           But every tribe -- the other con is that every  
10 tribe is assured of a share regardless of their workload.  
11 Even if they don't have any appraisal activity for the  
12 last ten years, they're still assured of some portion of  
13 the pie, because of the different components that are  
14 factored into the formula.

15           Like we mentioned before, it may have or may not  
16 have a direct or strong correlation to the appraisal need  
17 in the region, but this is probably one of the most  
18 complicated formulas, and it makes -- it's on an annual  
19 basis. To gather the information for the annual funding  
20 agreement, it's a chore.

21           But some people like it; the small tribes like  
22 it, because they get at least some consistency out of it.

23           MR. FRAZIER: And the Southwest Region uses a  
24 hybrid formula that I believe had -- I think formerly it  
25 had five components, but I think that because of the

1 difficulties in getting data on one of the components, in  
2 reality they use only four components, which I believe is  
3 workload, land base, population -- what's the fourth one?

4 MR. LESANSEE: Equal share.

5 MR. FRAZIER: Equal share.

6 This last slide has to do with Title IV funding  
7 sources. If you're a contracting tribe, this doesn't  
8 pertain to you; but if you compact, this matters. Most of  
9 the tribes that compact the appraisal program, they get  
10 their money, most of their money, actually from their base  
11 funding from the Office of Self-Governance. The  
12 appropriation for that money never flows through OST. It  
13 flows through BIA or ASIA. So that is money that,  
14 pointing to the regs, we can't touch.

15 So if, for instance, you got \$4,000 in baseline  
16 tribal share money from OST, that's written right into  
17 your AFA. And if we were to go to a different formula and  
18 we calculate it and say, "Well, actually your tribal share  
19 that you're supposed to be getting is \$20,000," by law we  
20 cannot just inject that money or we can't inject the  
21 difference into your base funding.

22 What we would have to do is on an annual basis,  
23 on a year-by-year basis, we would calculate what we  
24 determine your share should be, and we would supplement  
25 that in a transfer to OSG. So if, for instance, you get

1 \$4,000 in baseline funding, we determine that you should  
2 be getting \$20,000, we would do a \$16,000 transfer to OSG.  
3 But we cannot inject that into the base.

4           And the base cannot -- as some of you probably  
5 know if you're a compacting tribe, the baseline funding  
6 for a program cannot be adjusted in isolation. You would  
7 have to revisit the entire compact. Every program would  
8 have to be reevaluated, recalculated.

9           Both the tribes and the government tend to be  
10 leery of doing that. So that's one of the reasons that  
11 the base fundings have not changed in years, is because  
12 it's a very arduous process to go through that. So that's  
13 just for your information if you're a compacting tribe.

14           MR. LESANSEE: That includes our presentation.  
15 If you wish to submit your comments by e-mail, the e-mail  
16 address is up there for Debbie Meisner, and her telephone  
17 number is listed. Her office number is 816-1258, and her  
18 cell number is below there.

19           We desire all the comments to be submitted by  
20 Friday, September 18th. And this was reported in the  
21 Federal Register. And we encourage -- you know, after you  
22 get back and look at the material that you received today,  
23 we encourage you to submit your comments either by  
24 writing, fax, e-mail. You can also resort to the OAS or  
25 the OST Web site. I think we've got some information

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1 there that you can pull down.

2           And we plan to post the transcripts on that Web  
3 site, as well, and you can also pull those down to look at  
4 that, to consider the comments that we received along the  
5 way as we did the other tribal consultations. And then  
6 maybe you could come up with some suggestions of new  
7 tribal share formulas.

8           Points of contact is Lee Frazier and myself. And  
9 as we mentioned before, we have Frank Perniciaro in the  
10 back. And Sally Hernandez is not with us, but some of you  
11 may have been working with her in negotiations with the  
12 annual funding agreements. Yes, today she's probably busy  
13 doing that, because she's not with us today.

14           But I'd like to recognize J.P. Barham -- he's  
15 Director of the Office of External Affairs -- for  
16 supporting, for allowing his team to help us out with this  
17 project.

18           And, of course, support from Ms. Donna Erwin, who  
19 is the Acting Special Trustee, for giving us the  
20 opportunity to present this to you and present the issues.  
21 And I'm hopeful and it looks promising that we will come  
22 up with a tribal share formula that's transparent and  
23 that's equitable.

24           And with that, we'll move to questions and  
25 answers. The questions: Any questions that relate to the

1 presentation or any questions related to your regions.

2 I've asked Will Armstrong from the Pacific Regional  
3 Office.

4           And my other regional appraisers -- Gabriel  
5 Sneezy is not here; he's with the Western Regional Office.  
6 And Iris Crisman, who is the regional supervisor and  
7 appraiser with the Navajo Regional Office, she couldn't  
8 make it today, either. But we have been receiving  
9 questions specific to technical questions, plus the  
10 workload. So that's one reason why I've asked Will to be  
11 here. So if you have specific questions to Pacific, he's  
12 here to answer them.

13           And for the record, Dennis Wilson is representing  
14 Southwest, and he's the Appraisal Program Specialist for  
15 the Southwest Region.

16           MS. REVA SUAZO: My name is Reva Suazo. I'm  
17 with Taos Pueblo. We are a compact tribe where we get, I  
18 guess, the base funding. And I was wondering how  
19 specifically that base funding was calculated. Because,  
20 like, one of my questions was how is Southwest Region  
21 calculating the appraisal funds for the tribes, and you  
22 did answer that question. Although, what is the fifth  
23 component that they're having difficulty getting the  
24 specifics for?

25           MR. LESANSEE: It was realty; realty workload for

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1 the regions. Realty workload for each of the tribes and  
2 realty workload for the whole Western Regional Office.

3 MS. REVA SUAZO: I see. So they don't use that  
4 right now?

5 MR. LESANSEE: We had to drop it, because we had  
6 difficulty compiling that information.

7 MS. REVA SUAZO: So I guess when Taos went  
8 self-governance, then the base funding was using this  
9 particular formula that the Southwest Region uses, at that  
10 period of time when we went self-governance? Is that how  
11 they determined our base funding?

12 MR. LESANSEE: Yes. And it was also used in  
13 current dollars, too, versus dollars back in 1995, which  
14 was \$3.4 million. And I think, if I remember, when Taos  
15 Pueblo first entered the program, I think we were at \$8.6  
16 or \$8.9 million.

17 MS. REVA SUAZO: Yes, it was '07.

18 MR. LESANSEE: But the allocation was roughly  
19 around \$350,000 for the regional office.

20 MR. FRAZIER: So they used the four components to  
21 find a percentage relative to your region for you, then  
22 they multiplied that by the available regional budget, but  
23 that budget is now old.

24 How much is the Southwest Region's budget now?

25 MR. LESANSEE: It's about \$350,000. And Taos --

1 and there was one other tribe that recently entered the  
2 program -- and a 20 percent residual was applied to come  
3 up with the tribal share, too, as well.

4 MS. REVA SUAZO: Okay. Thank you.

5 MR. LESANSEE: So 80 percent of the \$350,000 was  
6 available to the tribes to take the program, appraisal  
7 function program.

8 MR. RICHARD MILANOVICH: Richard Milanovich,  
9 Chairman, Agua Caliente Band of Indians, Southern  
10 California. Has there been any consideration given to the  
11 fact that appraisals have a certain life span? I believe  
12 it's six months.

13 MR. LESANSEE: Not necessarily. The policy in  
14 the DOI manual, and it's general practice, the shelf life  
15 for an appraisal should be dependent on the market  
16 conditions. If the market condition is stable, then you  
17 have a longer shelf life. If you're in a highly  
18 transitional area and your market is changing -- in other  
19 words, your values are constantly changing because of the  
20 supply and demand -- if those become factors, then your  
21 shelf life would be a lot shorter.

22 MR. RICHARD MILANOVICH: Who makes that  
23 determination?

24 MR. LESANSEE: The appraisers, the regional  
25 appraisers.

1           MR. RICHARD MILANOVICH: There have been  
2 instances in Palm Springs where an appraisal was done five  
3 months ago, it's in the process of being in the Bureau of  
4 Indian Affairs paperwork review and documentation,  
5 et cetera. The Bureau does not complete their work, and  
6 then they say -- the Bureau tells us -- "Well, the  
7 appraisal is no longer good. You have to redo another  
8 appraisal, because the six months is up." Or some other  
9 time frame, maybe. But for the most part, it's six  
10 months.

11           MR. LESANSEE: It should not be automatic that  
12 way. It shouldn't be administratively determined. Some  
13 agencies in the past have policies that stated 12 months  
14 or six months or something was an administratively  
15 determined shelf life, and we've moved away from that as  
16 an industry and as DOI, as a department.

17           MR. RICHARD MILANOVICH: I'm not certain how  
18 prevalent it is any longer, but I know in the past it was  
19 a problem due to the inactivity or the inaction of the  
20 Bureau going forward, for whatever reason. I'm not trying  
21 to take apart the Bureau. I'm just saying that sometimes  
22 the Bureau does not actively pursue it, or it takes a lot  
23 longer than the shelf life of an appraisal which was done  
24 in the beginning, and then you don't get the work done by  
25 the Bureau. So then it creates more problems.

1           MR. LESANSEE: The two things that should be  
2 taken into consideration in the development of the  
3 appraisal, if there is a requirement -- and there should  
4 be a requirement -- that an economic analysis is done.  
5 The local area economics, the trend and analysis should be  
6 done, and that section of the report should indicate what  
7 the market is doing. Is it fluctuating quite a bit? Or  
8 is it stable? And that would be the indication of how  
9 long that shelf life could be.

10           But what I recommend is contact your regional  
11 supervisor appraiser and get that. Because they should be  
12 trending analysis, too, in house, and determine what the  
13 approximate effectiveness of the opinion of value should  
14 be. And it could be very well beyond six months. It  
15 could be 12 months.

16           MR. RICHARD MILANOVICH: At times, yes, it's  
17 necessary to go beyond the six months.

18           MR. LESANSEE: What we could probably do is, in  
19 our review of things, if it takes long for us to do the  
20 review, we should have a statement in there that states  
21 that this value is still reflective of the current market  
22 conditions and the market.

23           MR. RICHARD MILANOVICH: Yes. More of a basic  
24 question now: Who makes the determination as to what  
25 formula is to be used in a particular region? There is

1 12 different regions. You stated that Oklahoma has one  
2 formula, Southwest has another formula. And I'm not sure  
3 what the Pacific Region is. Who makes the determination  
4 as to which formula is to be used?

5 MR. LESANSEE: Well, in 1995, each regional  
6 office in BIA was tasked with coming up with their own  
7 formula, so that's where the differences developed. For  
8 instance, Navajo, since they're one tribe, we understand  
9 there is no formula. They deal with the residual and the  
10 funding available, I think, based on the residual amount  
11 and the total regional allocation for regional programs.

12 So yes, each region determines what their tribal  
13 share formula would be.

14 MR. RICHARD MILANOVICH: Is that in consultation  
15 with the tribes? Or is that just something that's done in  
16 the back room in Sacramento?

17 MR. LESANSEE: I believe there was extensive  
18 consultation.

19 MR. FRAZIER: I don't know about every region,  
20 but I know in some regions there were very acrimonious --  
21 like, Alaska had an extensive consultation and a big  
22 debate about what kind of formula they were going to use,  
23 and some wanted to go with workload and some wanted to go  
24 with land base. They eventually ended up with a land  
25 base. But there was an extensive consultation.

1 MS. DONNA ERWIN: This is Donna Erwin. But what  
2 we're trying to do is get away from that and move to  
3 something so that everyone understands that we're moving  
4 to something so it's equitable across the country.  
5 Because that's been the largest complaint, is that it is  
6 not equitable. In different regions they have different  
7 formulas. So we're looking to move to something that  
8 everyone can agree on and that is transparent so that  
9 everyone understands it.

10 MR. RICHARD MILANOVICH: Again, Ms. Erwin, does  
11 that include the tribes in consultation, the decision-  
12 makers in Sacramento and in Washington?

13 MS. DONNA ERWIN: Correct. And what we're  
14 looking for -- that's one of the things we're looking for  
15 here -- is input; plus going back and looking and saying,  
16 "I think this is the most equitable."

17 Now, originally -- and I think one of the things  
18 that we didn't mention, is that originally we thought we  
19 could do this and move this to the 2010 budget. But now  
20 we realize that's probably not going to happen, so we're  
21 probably to be suggesting something for 2010 so that maybe  
22 2011 we can go through this fiscal year, coming back,  
23 getting together, working with the tribes.

24 It's very detailed working with the tribes, so  
25 that we can come up with something everyone can agree on.

1           MR. RICHARD MILANOVICH: Right. Considering the  
2 state of the economy today and knowing full well that  
3 there is going to be an up-surge relatively soon,  
4 particularly in Palm Spring area where it starts coming  
5 back up again, it would be a great time to have something  
6 in place by 2010, if that's what's going to happen.

7           MS. DONNA ERWIN: Right. And one of the things  
8 we want to make sure that we're trying to do is that 2012  
9 budget cycle is coming up, so we want to be able to say,  
10 "What do we really need to run this program?" So we want  
11 to be able to say -- you know, if we're needing an  
12 increase, we want to be talking about it during this  
13 fiscal year so that we can get it before we submit 2012,  
14 so we can get ahead of the curve and say, "Look, this is  
15 really what we need."

16           So that's the reason we're out here sooner,  
17 trying to talk to everyone about this.

18           But I think another thing I was wanting to  
19 comment on is you had mentioned the shelf life. Sometimes  
20 if you're financing or going to a bank, the bank might  
21 come back and say, "This is six or nine months old," and  
22 in those instances you can bring that appraisal back to  
23 the review appraiser and they can say, "No, we still agree  
24 with it," or "Yes, we do need to adjust it."

25           Correct?

1           MR. LESANSEE: Well, yeah, we could. But the  
2 review appraisers ultimately make the decision whether the  
3 value, the pending value that was determined in the  
4 appraisal, still is valid. And banks tend to have  
5 policies like that, as well: six months, 12 months, 18  
6 months. And we've moved away from that, because it's not  
7 always consistent. It doesn't consistently move with it.

8           It's the policy decision that it might have been  
9 reflective of the conditions at that point in time, but if  
10 the policy doesn't change in sync with the market, then  
11 you might {inaudible}.

12           Will, you had a question or a comment.

13           MR. DELMAR ARMSTRONG: Will Armstrong. Chairman  
14 Milanovich brought up the issue of how those were  
15 determined in the past, the tribal shares, and I guess my  
16 point to be made -- and I'm not sure it's really an  
17 appropriate affair, because you're looking back in time,  
18 but my understanding was appraisers were excluded from the  
19 process for whatever reason. And it possibly might have  
20 been a thought of bias or whatnot. I throw that out there  
21 for what it is.

22           I also go back to what Ms. Erwin is saying: You  
23 know, that's the past. The main thing is getting the job  
24 done. Do you have the resources to get the job done?  
25 Just a comment. Thank you.

1 MR. LESANSEE: Are there any more questions?

2 MR. FRAZIER: I wanted to briefly touch on  
3 something that somebody asked before. They said, What is  
4 an inherently federal function or what's an inherently  
5 governmental function?

6 In the past all departments have been reluctant  
7 to sort of have a checklist saying, you know, It's an  
8 inherently federal function if it's this, this, and this.  
9 And all departments sort of reserve the right to determine  
10 what's inherently federal. But what an inherently federal  
11 function is is basically this: If there is a law that you  
12 must execute, that a department is charged with executing,  
13 and in carrying out that law, it has a material effect on  
14 someone's life, liberty, or property, you may not contract  
15 that out to someone.

16 So, like, if in carrying out a law, you will be  
17 imprisoned, a government employee must make that decision.  
18 The government may not contract out to someone that  
19 decision.

20 If it has to do with your property -- and  
21 appraisals does have to do with your property -- if it has  
22 a material effect on your property, the government may not  
23 contract out that determination.

24 Now, we can contract out the appraisal reporting.  
25 We can have a private commercial entity do an appraisal

1 report. But before we bless that, the review and approval  
2 function, a government employee has to be in the loop and  
3 say, "Yes, this is okay," because that has a material  
4 effect on your property and I may not contract that out to  
5 anyone else -- to a tribe, a private entity, anything.  
6 That is inherently governmental.

7 MR. LESANSEE: The other comment I received is:  
8 How is complexity factored into tribal share function?  
9 For instance, Agua Caliente Preserve.

10 The Great Plains Region: The Great Plains  
11 Region, we do about 6,000 a year appraisals. Most of it  
12 is done by what we call automated valuation audits, and  
13 the reason they can do or apply that kind of formula is  
14 there is a lot of homogeneous properties. It's mostly  
15 grazing land. The properties are not complex. They don't  
16 have very much improvements on them. They're consistent  
17 uses. There is available data for leasing activities.  
18 Around the reservations are Indian trust and restricted  
19 lands. They can apply those kind of methodologies.

20 In other words, the valuation is not as complex  
21 as, say, Palm Springs, Western Region like in Salt River  
22 and the Gila River locations, where there is really  
23 complex properties there. The numbers may not be high,  
24 but the time that it takes to do those valuations and the  
25 costs that are factored into that is also reflected in the

1 regional budget, too, as well. Because Will's contracting  
2 is a lot higher per contract than, say, Great Plains.  
3 Because Great Plains will average about \$500 an appraisal  
4 for a single appraisal, and yours is probably about --

5 MR. DELMAR ARMSTRONG: \$3,000.

6 MR. LESANSEE: \$3,000 an appraisal.

7 MR. ROBERT CHARLEY: My name is Robert Charley.  
8 I'm with the Hopi Tribe. We contracted realty in 1991,  
9 and prior to 1991, I think appraisals were almost  
10 nonexistent, along with a lot of realty documents. So  
11 we're really fixed in a bad situation, and there are not  
12 many realty documents. So essentially our workload is  
13 zero at this point. Maybe we do one or two a year. We  
14 just don't have the staff on board to do that, either.

15 So we've contracted it. Put in another 160,000  
16 acres into trust. Eventually we're going to put in  
17 another 500,000, so our acreage is going to be up to about  
18 2.2 million.

19 Our population, I would say realistically, not  
20 recognizing is as official, is probably about 16,000.  
21 Maybe in 2020 we'll be up to, like, 18,000.

22 You have not discussed at all the actual numbers  
23 of how much each region gets. I know for Western Region,  
24 which we're under, there is 21 tribes there. So I cannot  
25 make a determination or report back to my superiors on

1 what the actual amounts are. And I don't know if you're  
2 going to give them out today or not.

3           Because if you do them by equal distribution with  
4 21 tribes, obviously that's a lot. And maybe some other  
5 regions are a lot bigger, and then some are smaller. And  
6 today I would just like to get a few questions; like, for  
7 instance, an experienced appraiser would be able to do how  
8 many appraisals a month? An experienced person, how many  
9 appraisals can he crank out a month? That's a question.

10           MR. LESANSEE: Well, that question, how many  
11 appraisals a month, it depends on the complexity, the  
12 availability of the market information, if you're  
13 nondisclosure, restricted disclosure, full disclosure.

14           The reason why the residential appraisers are a  
15 lot more efficient than we are is a lot of their data is  
16 on line. They can download the data into their software  
17 and then they can do analysis. And with that information,  
18 then their appraisals are completed within maybe three  
19 days, two days; maybe a week if it's more complex.

20           Some of the distance to subject properties and  
21 the dispersion of comparable properties, the time it  
22 takes -- the scope of work, in other words, to complete  
23 the appraisal is dependent on the locations of the subject  
24 properties, the complexity, the dispersement of the  
25 comparable sales availability.

1           Especially nondisclosure states: The market  
2 information may be recorded in the courthouse, but you  
3 won't find the price they paid in the financial terms. So  
4 you have to contact each of the market participants or the  
5 parties to the transactions and find out how much they  
6 paid, whether it was a cash basis, what were the financial  
7 terms, what was the motivation.

8           When we verify our market sales, we try to get to  
9 the bottom of what the basis of their decision was when  
10 they purchased the property. That is factored in.

11           But in the Western Region they do a lot of --  
12 particularly where the Hopi Tribe falls into the region,  
13 they fall into the Western Region, they've been doing  
14 mostly in-house appraisals. They do very little  
15 contracting; only when it's necessary, when it's complex.

16           Salt River, they have self-governance compact for  
17 appraisals, so they take care of that, their appraisals.  
18 And Gila River is considering, but we do service them.  
19 That's another complicated area, because we have  
20 transitional areas on the southern end of, like, Tempe or  
21 Chandler. That's where there are highly developed, high  
22 valued properties.

23           But their turnaround, right now their turnaround  
24 time is probably --

25           MS. MEISNER: I've got from October through June,

1 the Western Region did 117 appraisal reports, and they  
2 have six appraisers.

3           MR. LESANSEE: In some cases when they do  
4 appraisal market analysis or market studies, like for  
5 their agricultural leasing, they can knock out quite a bit  
6 in a short period of time. But for the single appraisals,  
7 that can be more complex. They take a little bit longer.  
8 But with six appraisers, they're able to keep up. In the  
9 past two or three years they've been maintaining almost a  
10 zero backlog, if not current.

11           But as far as the number of appraisals per  
12 period, say vacant land. Vacant land, you probably could  
13 do one appraisal; if you really focused on it, probably  
14 one a week -- one every two weeks, probably, if you really  
15 focused on vacant land. But the more complex it gets, it  
16 depends on the availability of market data. If you have  
17 it already in house that you can gather it and do the  
18 analysis real quickly, your turnaround time should be a  
19 lot faster or shorter.

20           MR. ROBERT CHARLEY: In Western Region, distance  
21 is a big factor, because they cover Nevada, Utah. When  
22 every contractor does the appraisals, does Western Region,  
23 the appraisers, do they go back to that location again as  
24 part of their review process? Because that adds up to  
25 travel costs.

1 MR. LESANSEE: That's true.

2 MR. ROBERT CHARLEY: It defeats the whole  
3 purpose, so why even contract it out? That's a factor.  
4 The other thing is that leases sometimes are required  
5 where they have to have an appraisal every so many  
6 years -- maybe two years, five years -- and we always have  
7 to have a review. At renewal they have to review the  
8 lease again, and that includes several weeks, as well.

9 Can you talk a little bit more about the amounts  
10 for Western Region? Or is that not part of this  
11 consultation?

12 MR. LESANSEE: The funding amounts?

13 MR. ROBERT CHARLEY: The actual amounts that are  
14 appropriated to Western Region and how many tribes are now  
15 contracting in whatever capacity in their amounts. That's  
16 what I would like to know.

17 Everything comes down to money. We can talk and  
18 talk about appraisals, but it really comes down to money.  
19 And each tribe is going to take a position based on these  
20 factors; you know, whether it's land-based or population.  
21 And right now, if I was to be fair with the federal  
22 government, I would have to do a list of what appraisals  
23 need to be done on the new lands that just now are being  
24 put into trust on December 12th. We have to meet again  
25 with the BIA on other functions like NEPA, et cetera,

1 et cetera.

2           So I think it's a two-way street. When the  
3 federal government puts land into trust, you have an  
4 obligation to come up with the money, as well, because  
5 that's what you want to do if you're carrying out your  
6 federal responsibility. And if not, then just give that  
7 responsibility to the tribe.

8           But I guess that's never going to happen. We're  
9 going to always be under federal plenary function as far  
10 as the United States is concerned.

11           I'm taking up all your time. So that will be my  
12 last question.

13           MR. LESANSEE: Well, thank you. Let me go back  
14 to the matrix. We have gone from region to region to  
15 identify what is their matrix for each type of products  
16 that they do and the services they provide. I don't have  
17 it on hand, and I apologize for that. But we've asked,  
18 like, Western Region, all the types of appraisals, whether  
19 it's right-of-way, vacant land, residential home site.  
20 Whatever the type of appraisal they do, there should be a  
21 matrix for each of them, and they will vary depending on  
22 the property type.

23           MS. DONNA ERWIN: This is Donna Erwin again, and  
24 I believe one of the things is that you're correct: The  
25 amount of money we get today might not be the amount that

1 we're going to be getting in the future. But I think  
2 Debbie is going to try to get that information for you for  
3 right now, how we're doing that.

4 MR. LESANSEE: Oh, yes. We got the information  
5 just recently. Is that what you provided him, Frank?

6 MR. FRANK PERNICIARO: I just gave him your  
7 business card.

8 MS. DONNA ERWIN: We will provide that to you so  
9 you will know exactly.

10 MR. LESANSEE: It was about \$900,000 for the  
11 allocation. About \$900,000 for Western Region was the  
12 allocation.

13 And one of the things that the tribe, I think,  
14 from Grand Run or Oregon, I think they asked that  
15 question: If we're talking transparency, we should be  
16 given the information so that we can analyze this issue  
17 more carefully. We need the budget allocations for the  
18 region, the total budget for the appraisal program  
19 nationwide. What information can you provide that backs  
20 up the residual under the policy of 2005? Those kind of  
21 things. We need the information on hand so that we can  
22 make a business decision on which way to go and what  
23 recommendations to provide.

24 MS. DONNA ERWIN: And also, you discussed  
25 contracting, and I think that's something that we battle

1 with constantly, is when do you contract for a private  
2 sector firm to go out? It's extremely complicated. We're  
3 moving toward that.

4           But if it's not, we tend to agree. And we've  
5 done this for several years and been under the direction  
6 to try and do the contracting. And I think we've found  
7 exactly what you're saying: That it's costly. So we're  
8 looking at how do you move that back into in-house.

9           MR. LESANSEE: Yes.

10           MR. ROBERT CHARLEY: I just wanted to add on one  
11 more factor that we have. We have a situation at Hopi  
12 where it's a real powerful legal issue; it's called a land  
13 assignment.

14           MR. LESANSEE: Yes.

15           MR. ROBERT CHARLEY: And that can be done by the  
16 village, by the clan, or the tribe. And this is tied to  
17 the Hopi Constitution. You know, we have the Hopi, the  
18 village system is a part of that in the land and in the  
19 Constitution. So the government approved it through the  
20 IRA. So that's something that we have to institute.

21           And recently we had two tribal towers that were  
22 done by a land assignment, and the tribe wanted to do an  
23 appraisal request, and I told them we could not get an  
24 appraisal request because it's by land assignment. And  
25 there is a lease attached to it, but that's attached,

1 again, to the land assignment. And so Appraisals said  
2 they could not do that. And you probably have heard the  
3 story about land assignments.

4 MR. LESANSEE: Yes.

5 MR. ROBERT CHARLEY: There is absolutely no  
6 supervision or obligation by the federal government  
7 regarding land assignments. So how are we going to get  
8 appraisals done regarding these cell towers? And at the  
9 same time, the government is there saying that "We're  
10 going to carry out our federal function for fair market  
11 value of the land."

12 And that's why I'm trying to put together some  
13 kind of an office that would accommodate maybe a tribal  
14 person under 638, you know, under federal OST monies, and  
15 then maybe a counterpart tribal employee that will carry  
16 out the tribal portion of it, which would be the cell  
17 towers. So we're kind of in this little unique position.

18 And then we're also gaining a lot of leasable  
19 land, as well. And there is the Economic Development  
20 Corporation, and there is other areas that the tribe is  
21 really heavily buying up in cities, like in Flagstaff and  
22 things like that. Properties. So again, it comes down to  
23 money. But I really appreciate the \$100,000 answer.

24 MR. LESANSEE: Okay. As far as the fee lands are  
25 concerned, the Deputy Commissioner of Indian Affairs

1 discontinued the appraisals of fee lands several years  
2 ago, back in 1997. There was a policy decision, and  
3 that's still in effect.

4           And as far as the land claimants, I'm really glad  
5 you mentioned that. I was dealing with that in Zuni. I'm  
6 a member of the Zuni Tribe, and we do have land claimants  
7 out there, and each of the tribes, through traditional use  
8 or they hold possessory interest of the parcels which they  
9 either farmed, settled on, or whatnot. But certain  
10 families have certain land assignments.

11           And I was talking to the superintendent  
12 yesterday, and he was telling me that there was a BIA  
13 policy directive maybe two years that stated that if the  
14 land assignment is involving a tribal land assignee  
15 transaction and there is no federal involvement, then the  
16 superintendent doesn't get involved and that doesn't  
17 trigger a federal action; that we don't get involved.

18           But since the tribe ultimately has title, if  
19 there is an effect on the title some way and the  
20 superintendent has to make a decision or approve that  
21 transaction, then we get involved.

22           I mean, in the Southwest, for instance, we do  
23 cell towers out here for tribes, for tribal land  
24 assignments, because the tribe owns the title. The  
25 individuals only have the right to use the land. They

1 can't convey without the tribe's permission.

2           MR. FRAZIER: The tribe holds beneficial title,  
3 you mean?

4           MR. LESANSEE: Yes.

5           MR. FRAZIER: Because if it's trust land, the  
6 government holds legal title.

7           MR. LESANSEE: Well, beneficial title, but yes.  
8 So I will talk to Gabe about that and see why we are not  
9 providing that service to you in that particular  
10 transaction. Or in the future if they come up with a  
11 renewal or something like that, we should be providing  
12 that service.

13           MS. DONNA ERWIN: You might want to talk about  
14 the other large item that we have is, when do you really  
15 need -- one of our problems is when do you really need an  
16 appraisal and when can you do a waiver? Because we get  
17 into that. When we have limited resources, we tend to be  
18 doing lots of appraisals that maybe we really don't need  
19 an appraisal on. We could use a value or different  
20 valuations. You might want to touch on that.

21           MR. LESANSEE: Okay. Well, before 1999, before  
22 the Deputy Commissioner issued their policy appraisal  
23 requirements, per regulations, there were certain  
24 transactions that, like, for instance, probates: I mean,  
25 probates have evolved to what it is now because of the

1 American Indian Probate Reform Act. But back then, the  
2 regulations only required an inventory of the estate, and  
3 most oftentimes it didn't require an appraisal.

4           But nowadays, because there might be, like,  
5 probate actions, in whole, I guess, the environment has  
6 changed as far as the requirements. But certain things,  
7 there is existing regulations that allow an exemption,  
8 say, for gift deeds. If the interest landowner or an  
9 interest owner wants to give to certain legal descendants  
10 or relations with relatives or so forth, they can elect to  
11 waive the appraisal.

12           Or it also says that you can also, if they wish  
13 to have an appraisal for some reason or another, they can  
14 request it through a written request. But a lot of times  
15 we get the request without the steps of checking with the  
16 landowner. Does the landowner want the benefit of an  
17 appraisal? Or do they want to move forward, do without  
18 one?

19           We've made several attempts over the last three  
20 or four years to come up with, or we have requested -- the  
21 Special Trustee requested on two or three occasions to  
22 establish a waiver policy similar to what the Navajo  
23 Nation has, that was passed in 1995 or 1994. And these  
24 were mostly for noncommercial right-of-ways, for  
25 waterlands, the highway administration, the Indian

1 Reservation road system, the sewer systems and so forth.

2 I mean, especially when the tribe is running the  
3 638 program, the roads program, they pretty much spend  
4 money for an appraisal just to come up with a value to pay  
5 themselves. Because they're running the program. It's  
6 their land. They're granting the easement. But they're  
7 going out.

8 Because there is no waiver at the present time  
9 under the CFR Part 169 that provides a waiver. There is a  
10 provision for waiver of consideration, but not the waiver  
11 of appraisal. So they're tasked with going out and  
12 spending \$5,000, \$10,000 on an appraisal that may not be  
13 used for anything but to document how much the easement  
14 value is.

15 But we are looking at studies. I mean,  
16 revisiting that policy. There is another policy directive  
17 that came out that said that all real estate transactions  
18 must be supported by an appraisal. Well, that is --  
19 region by region there is differences. Others, they  
20 literally take it at is and they request appraisals for  
21 everything, no matter what the transaction is, and then  
22 they'll look at the existing regulation to interpret it on  
23 a case-by-case basis.

24 Like, for instance, 162.604 -- realty people in  
25 here -- that under the leasing, if the intended use is for

1 public use, educational use, religion, or -- what was  
2 another one? There was another one -- they can lease the  
3 property. As long as the property is not industrial or  
4 commercial in character, they can lease it at less than  
5 fair market value.

6           And what do you do if you have a situation like  
7 that? Do you go out and do a whole full-blown appraisal  
8 to come up with an indication of what might be the market  
9 rental statement? Or do you come up with something that  
10 they can use to make that decision of going less than fair  
11 market? Or do you waive an appraisal requirement in those  
12 situations?

13           But I think we need to look at that more and  
14 study what is available to us or the property managers as  
15 to their decision-making, as to what authorities they have  
16 available so that they can make decisions on when to  
17 request an appraisal or not. But I think there is a lot  
18 of regulations out there that give authorities, but there  
19 is not clear written guidance to realty people that  
20 initiate the request, whether it's tribal or BIA. And so  
21 there is inconsistency.

22           And some of the things I've asked the regional  
23 appraisers to do is to validate the requests as they come  
24 in. Because, for instance, like the gifting transaction:  
25 If the individual Indian is gifting to their brother or

1 sister or someone like that, have BIA exercise the  
2 authority to give the landowner an option to waive that  
3 appraisal requirement. Or have they automatically  
4 just requested the appraisal?

5           In some cases -- I think last year when we were  
6 in Northwestern Regional Office, a gentleman from Coeur  
7 d'Alene stood up and said he's been waiting six months and  
8 he's been trying to convey an interest to his sister.  
9 Why? Because the folks that were advising him did not  
10 advise him that they could have waived that appraisal.

11           But I was kind of surprised, too, that we were  
12 backlogged that long. But they should have been consulted  
13 that they could have waived the appraisal and moved on  
14 with that transaction.

15           MR. FRAZIER: It's recreational.

16           MR. LESANSEE: Yeah. I'm glad you answered.

17 Yeah, it's recreational.

18           All right. Well, if there are no further  
19 questions and so forth -- I mean, we have a session this  
20 afternoon that starts at 1:30. If you want to think about  
21 some of the things we've discussed this morning, maybe you  
22 could come back. And you're welcome to come back with  
23 further questions, and we'll be happy to answer them.

24           Thank you very much, and I appreciate you coming  
25 to join us and listen to us. Have safe travels back home

1 to your respective homes and so forth. And we look  
2 forward to receiving your comments. And the information  
3 is in the pamphlets where you can send your comments, and  
4 we'll be happy to give you the fax information or e-mail  
5 information. It's in there. But yes, thank you very  
6 much, and I appreciate your coming.

7 (The morning session concluded at 10:47 a.m.)

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1 (The afternoon session reconvened at 1:30 p.m.)

2 MR. LESANSEE: It's 2:00 o'clock, and I think I'm  
3 going to call it a day as far as close the consultation.  
4 What we can do, if you want, is Q and A, or we can just go  
5 on our separate ways, and so on. But we were hoping that  
6 the Zuni Tribe would be here with their loaded guns and  
7 stuff like that, but they're not here. So we'll just  
8 close it, and we'll make it a record that we did wait  
9 until 2:00 o'clock today. I appreciate you taking the  
10 interest in coming back again this afternoon.

11

12 (The Tribal Consultation Meeting concluded at 2:00 p.m.)

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1 Reporter's Disclaimer:  
2 Inaudible portions of this transcript result from the lack  
3 of a working amplification system. Although microphones  
4 were provided to the participants, the amplification  
5 system was not engaged at the time of the meeting.

6  
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11 were reported by me stenographically on August 18, 2009,  
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19 I further certify that I am neither employed by nor  
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