

1 TRIBAL CONSULTATION MEETING ON
2 REVISING TRIBAL SHARES FORMULAS FOR
3 REAL ESTATE APPRAISAL PROGRAM
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8 PROCEEDINGS: Rushmore Plaza Holiday Inn
9 505 N. Street
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22 Deb Alder
23 South Dakota Representative
24
25

1 MS. MEISNER: Hello. My name is Debbie Meisner
2 Wagner, and I'm with the Office of Special Assessment,
3 Office of Appraisal Services, and we are very glad to
4 have you here. This is a project that we've been
5 working on for a number of months now, and we are very,
6 very excited about it. So here with me to make the
7 presentation is Eldred Lesansee. He is the OST Deputy
8 Chief Appraiser.

9 MR. LESANSEE: Good morning.

10 MS. MEISNER: And Lee Frazier, who works for the
11 OST Office of Internal Affairs. And Frank Perniciaro
12 Office of Consumer Affairs, and we also have Deb Alder
13 who is the South Dakota rep, Great Plains Region
14 Supervisor Appraiser, and his employee. So, you can go
15 ahead.

16 MR. LESANSEE: Thank you, very much. I appreciate
17 you coming to attend this. I think it is very
18 important, like Debbie said, a very important discussion
19 on tribal shares. The purpose of the consultation is to
20 establish dialogue, start discussing the tribal shares,
21 appraisal of tribal shares formula issues. We've heard
22 from tribes over the years about problems or issues
23 regarding the tribal shares formula, and hopefully today
24 we will present those issues and some ideas on where we
25 can go with perhaps a new tribal shares formula. But,

1 mainly, just to discuss, and maybe have an open dialogue
2 later on at the end of the session, and discuss maybe
3 the formulas besides what we presented, and maybe have
4 ideas that we haven't considered yet, that maybe we
5 should consider and carry forward with the other tribal
6 consultations.

7 This is the secretary of the six tribal
8 consultations that we have, or we will have on this
9 appraisal tribal shares reformulation meetings or
10 sessions. On June 30th we had one in Oklahoma City.
11 And the next consultation we have will be in Portland,
12 Oregon on the 29th. And then in Billings, Montana,
13 August 4th and Anchorage, Alaska on the 13th, and we
14 will end the consultations in Albuquerque on August
15 18th. And at the end of the consultations we will
16 compile all the information and decide where to go from
17 there, as far as whether there is a need for further
18 consultations after we have gathered the information, or
19 what -- we'll just determine what will become of the
20 exercise of the project we are doing. And maybe at that
21 point perhaps a fair decision could be determined after
22 receiving all the consultations and then go back out and
23 give maybe the summary to all the tribal officials and
24 further comments, as far as what we've gathered as far
25 as comments, as well.

1 With that I guess I'd just start. How we are
2 going to do this is, Lee Frazier and I are going to
3 alternate and do the presentation today.

4 MR. FRAZIER: Good morning. I just wanted to add
5 a quick word before Eldred gets started on the actual
6 presentation. The reason we did this, of course, is
7 there is and has been on an executive order that says
8 that any departmental policy that has a substantial
9 direct effect on tribes, that we are to consult with
10 tribes. So that's what this part of the exercise we
11 feel like that adjusting the formula that allocates
12 tribal shares for the available services has substantial
13 and direct effect on tribes and so that is why we are
14 doing this consultation.

15 MR. LESANSEE: I will give you a little bit of
16 background. In 1995 the BIA developed, region-by-region
17 formulas used to allocate tribal shares for the
18 appraisal program. You may have recalled that the Great
19 Plains Regional Office, because every region in the BIA
20 were developing formulas for the tribal shares, not just
21 for appraisals, but it included reality and all the
22 other programs. And at that point in time, what they
23 called the Indian Lands Valuation Program was in BIA as
24 part of the Real Estate Services Program. So, a lot of
25 these formulas that are applied or established, were

1 established in 1995, were in conjunction with or
2 developed in conjunction with the reality program.

3 When the appraisal program was transferred from
4 BIA to OST in 2002, the BIA awarding officials and OST
5 agreed to continue the region-by-region formulas to
6 maintain continuity.

7 These are the existing tribal shares formulas. We
8 have different formulas across the 12 regions. First we
9 have the equal division. Easy to calculate, but likely
10 not in compliance with the statutes. And then the
11 land-based division. No strong correlation with
12 appraisal needs. As we've looked at it and evaluated
13 the land-based formula and then the population based
14 division, again, no strong correlation with appraisal
15 needs. And then you have the workload-based division.
16 Appears to have direct correlation with appraisal
17 service needs, and probably would be the easiest to
18 apply. Then you have the hybrid. I believe there is
19 only one region, the southwest region is probably the
20 only one that applies --

21 MR. FRAZIER: I think we have someone here from
22 Oneida and they are from the Midwest region. They do
23 equal division, which in equal division you take your
24 available budget and if you have ten tribes in the
25 region, you divide it by ten and everybody gets

1 one-tenth. And that is very easy to calculate.

2 MR. LESANSEE: The hybrid division is probably the
3 most complicated formula. Again, there's no direct
4 correlation with appraisal needs, and it requires a lot
5 of information, as you will see later on. A lot of data
6 from different sources in order to apply the formula.

7 And the reasons for revising. Tribal shares were
8 calculated in 1995 have not changed; Remained static
9 since 1995. Tribal shares have not been recalculated in
10 step with increased regional budgets. Before 2002,
11 fiscal year 2002 -- actually before that. Because BIA
12 established or reestablished the chief appraisers
13 position, and I believe maybe in 2000, I think the
14 budget went up from 3.4 million dollars to around ten
15 million. And whereas the tribal shares remained static
16 at that point in time and then moved with the change in
17 the budget and then the allocations in the regions.

18 And then their point is that there may be
19 inequities between tribes that have contracted or
20 compacted at different times. For instance, the tribes
21 that have recently entered the program are negotiating,
22 based on current dollars rather than 1995 dollars.

23 MR. FRAZIER: Part of the benefits, what we think
24 are the benefits of revising is that there will be
25 greater uniformity across the different regions if we

1 decide to go with the same formula throughout Indian
2 Country. We haven't decided yet, and we may decide that
3 a particular region needs a slightly different
4 formulation. But our desire at this point is to try to
5 go for the same formula across the United States. There
6 will be better transparency in determining, so that when
7 we're talking to tribes and they want to know, if they
8 want to know where their formula comes from, it's not
9 just some black-box calculation. We'll be able to say,
10 "Listen, here's how we calculated the numbers; here's
11 your workload; here's your population," whatever numbers
12 we decide to use, everybody knows what numbers we're
13 using and there is no kind of confusion, well, we just
14 cranked it out and here's your number. Everybody is
15 going to be upfront about where their numbers come from.

16 And there will also be greater clarity about the
17 funding residuals. Is everybody familiar with the term
18 residual? The residual is the number that the federal
19 government retains. It's the amount of money the
20 federal government retains to perform what are deemed
21 inherently governmental functions.

22 So when we take a regional budget, before we
23 allocate it to the tribes, a portion of that is held
24 back for the government to perform the functions it has
25 to perform, and that's called the residual. So when we

1 talk about residual, that's what we mean.

2 MR. LESANSEE: And it's described under USC
3 Section 450 j-1(a), and that's for self-governance
4 compacts. And you'll find the consistent language under
5 900, I think.

6 MR. FRAZIER: This portion of the statute refers
7 to Title 1, and we have some folks in Title 1 and Title
8 4. I believe Oneida is Title 4, self-governance tribe.
9 But there is very similar language for the compacting
10 tribes, and another part of 25 USC. But this is the
11 main language governing how we are supposed to allocate
12 funds. It says, the amount of funds provided under the
13 to self-determination contract entered pursuant to this
14 sub-chapter, shall not be less than the appropriate
15 secretary would have otherwise provided for the
16 operation of the program or portions thereof for the
17 period covered by the contract. And the way we
18 interpret that to mean is, because it's a little
19 confusing, the Department has interpreted that is, the
20 amount of funds -- if you were a direct service tribe,
21 whatever money the secretary would have spent performing
22 a program for you, say appraisals, then if you contract
23 or compact to perform that function, you should get the
24 same amount of money, whatever the secretary would have
25 spent on you, you should be given that same amount of

1 money.

2 MR. LESANSEE: We might have skipped this --

3 MR. FRAZIER: Yeah. This goes back to the
4 residuals. BIA residual funds are the funds necessary
5 to carry out BIA residual functions. That's a little
6 circular. And BIA residual functions are those
7 functions that only BIA's could perform if all tribes
8 were to assume responsibilities for all BIA programs
9 that the Act permits. And this is not from the statute,
10 this is from the CFR, the regulation. It's also a law,
11 but it's from the Regs.

12 And there's another portion of that, that we
13 haven't been in compliance with in past years, but we
14 plan to come into compliance. It's this 1000.95,
15 "Residual information will consist of residual functions
16 performed by the BIA, brief justification why the
17 function is not compactible, and the estimated funding
18 level for each residual function. Each regional office
19 and the central office will compile a single document
20 for distribution each year that contains all the
21 residual information of that respective office." In
22 other words, every year we should be giving out, OST
23 should be giving out to tribal leaders, a list you and
24 we plan to start doing it next year, giving you, and we
25 plan on doing it next year, giving you our residual

1 information saying, here's the inherently governmental
2 functions; here's the amount of money we retain before
3 we allocate to perform that function, so that you know
4 where all the money is going.

5 MR. LESANSEE: And one of the things to clarify
6 that is, it's not just the appraisal program, but the
7 OST.

8 MR. FRAZIER: Yeah. Everybody's supposed to --
9 this is a requirement for everybody; it's not just OST.
10 It's BIA, OST -- everybody in March of every year -- and
11 I think there are some offices that do this already, but
12 we haven't been doing that. I think we're just not
13 really aware of the requirement. But every year we're
14 supposed to, everybody is suppose to get a list of all
15 the residual functions and the monies that are retained
16 to perform this.

17 MR. LESANSEE: The current residual for the Office
18 Appraisal Program is at 20%. And it was established
19 through policy by the former chief appraiser for the
20 Department of Interior. And that -- we have negotiated
21 the new contracts or compacts under this 20% residual.
22 The future for OST -- in the future OST will need to
23 ensure that residual is sufficient to fund those
24 activities, which by law must be carried out by federal
25 officials. And like Lee mentioned, the inherent federal

1 functions are the residual functions.

2 MR. FRAZIER: This is one idea and this is kind of
3 going back to the different types of different ways,
4 different type of formulas we can use to allocate monies
5 for the shares. This would be a workload-based formula.
6 And the math part is kind of in that little part right
7 there. Basically what it is, to calculate a tribal
8 share, you take the regional budget, like say Great
9 Plains regional budget and you subtract the residual and
10 for all the regions right now it's 20%, so you take the
11 Great Plains allocation and you'd subtract 20% leaving
12 80%, and then you take that number and you multiple it
13 by the tribal component -- and for this idea, the tribal
14 component would be, you take the average tribal workload
15 and you divide that by the average regional workload.
16 So, for instance, we'll do easy math. If there were
17 only ten appraisals done in a region and a tribe did
18 four of them, then you would take four divided by ten,
19 40%, you'd multiple that by the regional budget minus
20 the residual and that's how you get the tribal share.

21 Again, notice we say average tribal workload. We
22 haven't decided how many years we would use, but you
23 could have a one-year workload; you could have a
24 three-year average workload; you could have a five-year
25 average workload or greater. The idea of averaging out

1 the workload is that you smooth out any demand spikes.
2 The more years you use, the smoother the curve is going
3 to be, your demand curve, but it's going to be less
4 responsive to recent increases in demand. So the longer
5 the tail of your average the less -- if you get a demand
6 spike in one year, and you've got a five-year average,
7 it's going to increase that next year, but it's not
8 going to increase as fast as if you had a three-year
9 average or two-year average. So that's one thing we
10 have to consider.

11 We all have to consider together, is if we're
12 going to use a workload based formula do we want to have
13 it an average workload, and if we want to have an
14 average workload, how many years do we want to include
15 that average.

16 MR. LESANSEE: And the current policy, or I guess
17 the method we use, or the number of years we consider is
18 five years.

19 MR. FRAZIER: And this type of formula is
20 currently being used in some regions. Eastern Oklahoma
21 now has a purely workload-based formula where their
22 allocations are strictly based on the amount of
23 appraisals that you do proportionate to what everybody
24 else in your region does.

25 MR. LESANSEE: And I think one of the things about

1 workload based formulas here that would make it I guess
2 favorable to the Tribe is that the bullet number three
3 is that OST intends to make it dynamic, to be current
4 every year, so that it changes with the changes in the
5 workload.

6 MR. FRAZIER: Yeah, that's probably one of the
7 biggest things -- that will be one of the biggest
8 changes, whether we go with an equal division, a
9 workload based or a population based, or however, the
10 thing that will probably be the biggest difference is
11 that we intend for this formula, or we would like for
12 this formula to be dynamic. That is, to be adjusted
13 with the budgets as they change from year to year.

14 Like for example, I think Oneida is with -- their
15 share was calculated back in '95 or '96, an equal
16 division. It has not changed. It has the same amount
17 of money every year. It has not floated with the
18 budget. They get the same amount every year. And
19 whatever formula we come up with, if we stick with an
20 equal base division, they will still very likely get
21 more money, because their share, even though it's an
22 equal division will be floating with the budget. So if
23 their regional budget increases, they'll participate in
24 that. They'll get an increase.

25 MR. LESANSEE: This is a demonstration of the

1 workload based farmland. We have three tribes, A, B,
2 and C. And these are their appraisal that were done for
3 the tribes in the fiscal year 2005, '6 and '7. And if
4 we go down the columns here, you've got an average of,
5 or a total of 55 for 2005; a total of 42, 2006 for the
6 region; and 47 for the 2007. And if you averaged the
7 region of workload for that region it's 48 average. If
8 you go across here for Tribe A, B and C, your averages
9 are 32, 4, and 12.

10 So, this formula, if you apply this formula, you
11 divide 48, and the regional average would be an
12 individual, 67%, 8% and 25%. You multiple that with
13 your, again the regional budgets 100,000 residuals to
14 money and multiply the 20 to 100,000 and what you've got
15 left over available to the Tribe is the \$80,000. So you
16 apply each of these percentages to the 80,000 and you
17 get the dollar amount of tribal shares.

18 MR. FRAZIER: Is everybody clear on the math of
19 that?

20 MR. LESANSEE: And these numbers will come from
21 the OAS regional tracking systems, or we keep all our
22 workload data and we report them on a monthly and
23 quarterly basis. So this will come from the amount of
24 the request that you generate, and the amount of the
25 work we do on a yearly basis.

1 GEOFF OLIVER: I have a question. Just from the
2 appraisal side, I know that some of these tribes have
3 more complex properties that the contractors go out and
4 you might have one contractor bidding at \$500 on an
5 appraisal and another on 1300. So if you've got the
6 division or the calculations there, they might go
7 through their budget relatively quickly compared to -- -
8 is that ever taken into consideration on the bid?

9 MR. LESANSEE: Sure. And where that would be
10 taken into consideration is your regional budget. The
11 amount, the cost of doing business in that region should
12 reflect the cost of the, or the complexity of the
13 appraisal that's done in that region. You have lots of
14 rights-of-ways, but you have a lot commercial type of
15 properties and you're contracting costs are elevated
16 (inaudible.)

17 MR. FRAZIER: That is something that we
18 considered, and this particular hypothetical example
19 does assume that all appraisal or equal, which everybody
20 know they're not; there's complex appraisals and there's
21 very basic appraisals. This treats kind of apples and
22 oranges, as if they're all the same, for the purposes.
23 And I think what we're hoping, because, if you start
24 breaking it down, you could have different flavors of
25 appraisals. Saying we're gonna give a complex appraisal

1 a weight of three. We are going to get a little more
2 basic appraisal a weight of two, and a very simple
3 appraisal a weight of one, and then start adjusting
4 that. That is one way we could calculate appraisals to
5 kind of be more exact about the workload demand, as it
6 were. But the problem with that is then, who makes that
7 judgment? Because if we are saying to a tribe, okay,
8 it's your program now, you're in charge of counting your
9 appraisals and telling us, "Is it complex; is it
10 simple?" Well, every tribe is going to say, "Well, wait
11 a second, I think all of mine are complex." And so then
12 it becomes this self-inflating thing. Everybody knows,
13 I'm gonna get more money if I have a higher demand or
14 so. And in order to avoid that problem, we count all
15 appraisal products the same. That's what we would be
16 thinking, we'd treat all the appraisal products the
17 same, and we try to capture the fact that some regions
18 have some more complex appraisal than others in the
19 regional budget.

20 GEOFF OLIVER: Let me just follow-up on that. I
21 thought I heard Eldred say, those numbers based on the
22 number of requests received. So those numbers would be
23 actual appraisals completed --

24 MR. FRAZIER: Transmitted, appraisal products to
25 the client.

1 MR. LESANSEE: Yeah. In a perfect world we
2 wouldn't have that. Because when we were looking at
3 this, when we were looking, okay, well, if you take only
4 the request, we had that backlog carry over. But then
5 we figured in 2005 we had 20 backlogs and we caught up
6 in 2006.

7 GEOFF OLIVER: The Tribe we have, we don't have
8 any backlog so we don't know there's a request out there
9 until we receive it, and by the time we send it out --

10 MS. MEISNER: Well, once they start using --
11 you'll be in a position and you'll know what is pending
12 and you'll have an idea. And the tribes should be
13 giving you quarterly reports of what they have.

14 One of the other things to follow-up on Lee's
15 discussion about the complexity. When you as the
16 regional appraiser get a request in, your budget kind of
17 reflects whether or not it's complex. Because you have
18 more people, more staff.

19 MR. LESANSEE: So this gives you the idea of the
20 impact of changing the tribal shares formula from one
21 tribe to the next. Previously we have years 2005, 2006,
22 and 2007. Now we've got years 2006, '7 and '8. And we
23 go one year forward. And the numbers have slightly
24 changed in 2006 we've got an average of 42, 45 here and
25 then a regional average of 47 here. So we take an

1 average of the regional workload on a yearly basis for
2 three years. You've got 45 versus 48 previously. And
3 then your tribal numbers are slightly different, as
4 well. Your averages are now 30%, 7% -- numbers, I'm
5 sorry. About 31 appraisals for Tribe B and seven again
6 for Tribe C. You divide these average totals from the
7 45 and you get your percentages again. And then notice
8 the amounts have changed. Previously you had 53 for
9 Tribe A. And about 67 for Tribe B, and 20,000 for Tribe
10 C. You've got 12 and 12 here.

11 MR. FRAZIER: We just made that slide to
12 illustrate the fact that if you did have a workload
13 based formula, and it was dynamic from year to year, it
14 would be possible for your share to go down from year to
15 year. Because if your demand dropped relative to your
16 region, then it's possible in the following year that
17 you would have less of a share.

18 MR. LESANSEE: This remains the same, as you can
19 see. Allocation of 100,000, 20% residual, and the
20 difference is in the workload. That's why it's workload
21 based. And then you talked about equal --

22 MR. FRAZIER: Yeah, equal division. And this is
23 what we have in the Midwest region. And you basically
24 can just ignore those numbers, even though they are the
25 same in the past example. They don't matter. In this

1 method, workload just doesn't matter. You just take --
2 there's three tribes, you know, your regional budget is
3 80,000, divide 80,000 by three; that's it. Everybody
4 gets \$26,667. Now it could change from year to year
5 though if the regional budget goes up or down, but you
6 still would divide by three?

7 MR. LESANSEE: These percentages don't matter.
8 One-third, one-third. Equal share.

9 MR. FRAZIER: And the problem we have with the
10 equal division, although it's very simple to calculate,
11 going back to the statute, it's probably not in
12 compliance with the statute because the statute says, we
13 should be allocating to the tribes if they compact or
14 contract, we should be giving them the same amount of
15 money that the secretary otherwise would have spent on
16 them to perform that function.

17 Now, if this were a direct service situation, you
18 know, Tribe A, they're getting 32; they're doing
19 two-thirds of the appraisals, I would be spending
20 two-thirds of my direct service money doing appraisals
21 for them. So it's hard to justify on a statutory basis,
22 why I would be giving every tribe an equal share, when,
23 what I would be doing on their behalf if it was direct
24 service, would not be an equal share.

25 MR. LESANSEE: And see, the amount of work for

1 each tribe over three years, you have 92 here, and 22
2 here, and 22 here, but we still get the same amount. So
3 there's no relationship with the amount of work that's
4 being done.

5 MR. JOHNS: Even given what the law says, don't
6 you think that THAT fact scenario would be off the
7 table?

8 MR. FRAZIER: It's problematic, yeah, but it is
9 the existing formula that we have in some regions, and
10 namely Midwest.

11 MR. LESANSEE: These land based, I think this is
12 applied in Alaska.

13 MR. FRAZIER: Alaska has land-based. It's not as
14 simple as this. This one, again we have a very simple,
15 hypothetical where you just take, you know, these same;
16 Tribe A has 1,000 acres, Tribe B has 500, Tribe C has
17 100 and that shows what the percentages are,
18 proportionate to the region. Same thing, you get down
19 here, Tribe A acreage is 62%, multiple that by 80,000
20 and the tribal share is \$50,000, exactly. So the math
21 is very similar to the workload-based, except you're
22 using land, instead of workload.

23 MR. LESANSEE: So you add some of this up and you
24 get 1600 acres. And like Lee said, you divide 16 by
25 1,000, 500 and 100 to get your percentages.

1 MR. FRAZIER: What they do in Alaska is they do
2 use acres, but they also have town sites there and they
3 weight them. So that, a town site, even though it's
4 less acreage, it gets weighted a little more to give it
5 a little more weight in the formulation so it's not
6 punished for being just a small little town site.

7 MR. LESANSEE: And the assumption is that the more
8 acreage you have, the more appraisal work there is.

9 MR. FRAZIER: Yeah, that is the assumption, and I
10 think based on what we've talked to, our regional
11 supervisor or appraiser, there's really no good, strong
12 correlation between your land base and your appraisal
13 needs. You could have a relatively small land base and
14 have huge appraisal demand, because you've got a lot of
15 transactions going, a lot of conveyances of different
16 kinds. You've got a lot of activity, so you will have a
17 very high work load, and relative to the rest of your
18 region you really don't have that big of a land base.

19 MR. LESANSEE: And what Geoff mentioned too, that
20 even though this tribe might have 100, you might have a
21 complex appraisal.

22 GEOFF OLIVER: It might be in Palm Springs.

23 MR. LESANSEE: Mostly rural type, recreational
24 assistance type properties.

25 Population-based. Very similar to the land-based,

1 but you're dealing with population statistics, for each
2 of the tribes. And you have cumulative amounts. Total
3 tribal members in the region, enrolled tribal members of
4 6500. You divide that into each of these populations or
5 enrolled members of each of the tribes, and you get your
6 percentages, and then you apply that to the 80 percent,
7 what's available to the Tribe to get your tribal share
8 there. And again, the assumption is, the more people
9 you have, the more appraisal work you require.

10 MR. FRAZIER: I don't know that anybody has --
11 does anybody have a purely population-based? There are
12 some regions that use it as a component. And we can go
13 to the next one. This is called the Hybrid formula.
14 Which means it has different components. And this is
15 what Southwest uses one like this, and eastern Oklahoma
16 used to have one like this; Northwest has one like this.

17 And I think someone -- the idea is that instead of
18 using one factor, you use a number of factors.
19 Southwest I think they had five, but they only used
20 four. I think northwest used four. And what we mean is
21 that they said, okay, rather than say it's all workload
22 or it's all population or it's all land-based, we're
23 going to use all three of them, or all four of them.
24 And we said, okay, in our hypothetical region, we're
25 gonna give some weight to the land, some weight to the

1 population, and some weight to the workload, and then
2 we're gonna sort it out. And what weight are we going
3 to give it? We say, well, we figure workload is the
4 most important factor, so we're gonna give it a .5 for
5 50 percent. We're gonna say, in our calculation, half
6 the weight is gonna be given to workload. And .25, or
7 one quarter is gonna be given to the population, and .25
8 is going to be given to the land base. And so that
9 added up equals 100%. So you could play around with
10 these weights. Like you could do it one-third,
11 one-third, one-third, or you could have four components
12 and each one is weighted at a quarter. But then the way
13 the math works out, going back to the previous slides,
14 remember Tribe A had 62.5% of the land base, and we are
15 weighting it a quarter, or 25 percent, so you multiple
16 62%, so 62.5% is the same thing as .625. You multiply
17 .625 times .25 and you get .1563. Same thing. This
18 tribe had 31% and you multiply .25 and you get .0781.
19 This tribe .056. So you do this for every component and
20 then you add these numbers together .1563 components
21 with different weights given to different components and
22 you use these weights in the same way you did the other
23 ones.

24 You go down here and you take your \$80,000 dollars
25 and you multiple it times .605 -- probably a rounding

1 error. So this tribal share is 48398. Does that make
2 clear what we're doing there? Again, you could change
3 these weights around. You can say, "I think the land is
4 the most important, I'm gonna give this a .5, and I'm
5 going give population .1. And then I'm gonna give .4 to
6 workload." As long as the weights, when you add them
7 up, equal one, then you can play with it. You can't
8 weight the different components in the different ways.
9 And you said, I think Southwest, they have one of their
10 components is the equal division, so they say, we're
11 gonna give some weight, so every tribe, even if they
12 have no land base, no population, no workload, they're
13 gonna get something, because we're gonna say that every
14 tribe gets something. They get .25 times one-tenth, for
15 just being a tribe in that region. So that's a
16 possibility too.

17 MR. LESANSEE: Yeah. That case it was one over
18 25, 25 tribes in the region. And the other thing that
19 -- the problems that we have in applying this formula
20 was workload. We're trying to gather workload for the
21 OAS, the amount of work we produce on an annual basis
22 and then the realty statistics. We could never get
23 those and so we stopped using them.

24 And population was another one. There was
25 conflicts between BIA's numbers, enrollment numbers

1 versus the tribes. And then the land, the
2 trust-restricted properties within the regions, that was
3 also in conflict, as well as the tribe's numbers were
4 different from the BIA. And so that -- it required some
5 reconciliation or discussion over what is the real
6 numbers. So that's the complexity of that. What Lee
7 mentioned, it at least gives small tribes, that have
8 either small land base or low population, a part of the
9 pie.

10 MR. FRAZIER: It may not be consistent with the
11 statute, but it does -- this has to do with Title 4,
12 which is your self governance funding sources. And most
13 of the tribes that compact to do the appraisal program,
14 they receive their appraisal funding through OSG, it's
15 part of their base funding, and that doesn't change.
16 There's also a regulation that says that base funding
17 cannot be changed. So, we have this problem where we've
18 got a regulation that says, you can't adjust this base,
19 but we have another statute that says, you need to be
20 giving the Tribe the same amount of money that you would
21 been spending if you were doing it directly.

22 So we have got to try to find some work around to
23 give effect to both laws. If at all possible we need to
24 try to give effect to both laws. So the way that we
25 would do that is that if we calculate -- say we had a

1 tribe that they are receiving their base OSG Title 4
2 money, and it was like \$5,000, and then we did one of
3 these calculations and they say, you know what, they
4 should be getting \$8,000. What we would do is on a
5 yearly basis we would give that tribe a \$3,000
6 supplement. We would add it to their base. We can't
7 touch their base because we don't control it, and by law
8 we're not allowed to adjust it. So OST would supplement
9 their base by \$3,000 to raise them up to that 8,000.

10 MR. LESANSEE: And then the funding source, it's
11 directly to BIA, right?

12 MR. FRAZIER: Yeah. Directly to the -- the
13 appropriation goes to the Office of Self Governance. So
14 we don't even control that money -- OTPA base -- people
15 who are involved in Title 4 governance, they know about
16 this, because they negotiate their AFAs with OSG every
17 year. But that base amount can't be changed.

18 MR. LESANSEE: That's the extent of our
19 presentation. And we appreciate you coming. We will
20 start with comments, suggestions or questions and so on,
21 if you have any right now, and we can discuss what we
22 presented, or if you have other things to discuss we can
23 do that, too.

24 These are the contacts. This is the team. We
25 have myself, Debbie Meisner, Lee Frazier, and the

1 appraiser and Frank back there, and Sally Hernandez and
2 our contact numbers.

3 MR. JOHNS: I wanted to ask, because I know you
4 guys have done one of these already, whether you have
5 had any suggestions from the tribes at the first
6 location, on what formula works fair, or if there's
7 other options that have been provided.

8 MR. LESANSEE: No. It was more in the form of a
9 comment. One of the tribes, they thought that the
10 hybrid might be something. I was kind of surprised
11 because I thought that might be something they would
12 consider. And they also asked a question, well, how do
13 we provide it; is there a way or a place we can submit
14 our information or comments and so forth.

15 MR. FRAZIER: I think they mostly just taking it
16 in. And I would suspect that all tribes will want to do
17 some of their own number crunching, and seeing how the
18 different formulations might effect them.

19 MS. MEISNER: We did have one say that they liked
20 the population based.

21 MR. FRAZIER: Well, and we also had some comments
22 from some of our fed-side people they thought the
23 fairest thing would be just to divide it equally. But
24 again, if you go back to that statute, the statute
25 doesn't say anything about a fair division. It says you

1 need to allocate these funds in a way that would be
2 equal to what, if the secretary were doing it otherwise,
3 you know -- if this was a direct service situation, what
4 money would the secretary spend to perform this function
5 for this tribe, this tribe; okay, that money needs to be
6 allocated the same way. And if the secretary wouldn't,
7 if they had no appraisal work, and the secretary
8 wouldn't spend that money on them, then how can you
9 justify, legally, giving them an allocation.

10 MS. MEISNER: And Geoff has -- this was an
11 appropriate example, but when we were going through the
12 tribal shares trying to collect the numbers that we had
13 and we have to go back to -- well, what about this
14 tribe. Well, we didn't do anything for that tribe. So
15 equal share definitively would be at a disadvantage for
16 some of the larger tribes here.

17 MR. LESANSEE: And the way the process works is
18 that the officials at BIA are the individuals that make
19 the decision and interaction, administrate, administer
20 these programs, and the officer of external affairs work
21 closely with the officials and then we have the
22 officials that represent the regional supervisor
23 appraisers. And each year we have AFAs, and each year
24 it's an exercise of trying to accumulate all the
25 necessary information in order to have the current

1 information at the negotiation meetings. And during the
2 last few years, we've had problems in some regions where
3 new tribes have considered entering the program, the 638
4 program, and we've had difficulty in locating the source
5 documentation established in 1995. And that's one of
6 the difficulties in applying -- and the reasons why --
7 one of the purposes of trying to establish a new tribal
8 chair that we mentioned before, transfer, and it's
9 hopefully equitable to all tribes. But to have a
10 formula that everybody is in full understanding and
11 consistent.

12 GEOFF OLIVER: Who (inaudible), like Standing
13 Rock --

14 MS. MEISNER: We couldn't find the plans.

15 MR. FRAZIER: We just know they were calculated a
16 long time ago, and we're not sure the basis on which
17 they were calculated.

18 MS. MEISNER: What we do know though, no matter
19 what formula is used, tribes will receive more than what
20 they're currently receiving with the exception of one
21 tribe.

22 MR. LESANSEE: Mainly because we are using current
23 (inaudible).

24 MR. JOHNS: I know that you guys sent letters out
25 a month ago or so, but I don't see very many tribal

1 representatives from the Great Plains here. So I'm
2 wondering if there's going to be a follow-up, just
3 because I know that in other governmental meetings when
4 somebody didn't show up, whether they got notice or not,
5 there is a great clamor about, "We didn't get adequate
6 notice." Is there going to be any follow-up to this? I
7 know you have at least one more meeting, right?

8 MR. LESANSEE: There was a suggestion in Oklahoma
9 that we have the program officials here and they were
10 taking notes and listening to the presentation and
11 taking home information, but they wanted to consult with
12 their respective tribes and come up with a response.

13 MS. MEISNER: One of our concerns though is, if we
14 can't push forward with this, we have some tribes that
15 are really on the verge, or who already have gone to a
16 point where the program is at risk, and if they would
17 have additional funding, then they'd be able to go out
18 and do the program much better.

19 MR. JOHNS: I mean -- I'm not suggesting that
20 notice didn't get sent out. What I'm saying is, in my
21 opinion, the lack of the presence of tribal
22 representatives here could become an issue later.

23 MR. LESANSEE: And we have opened that opportunity
24 for, at the end, after all this -- if the trend
25 continues that we don't have very much participation,

1 that we will follow-up and send it out to the tribes.

2 MR. JOHNS: That's part of the process?

3 MR. FRAZIER: Yeah. Also this region has, the
4 Great Plains Region has the least amount of
5 participation in self-determination and self-governance.
6 Now we feel like this allocation issue, actually does
7 have an effect on direct service tribes. Because part
8 of what's being negotiated is the residual, and what's
9 held back -- you know, we put this chart up, just to
10 illustrate the process. And we talk about the idea of
11 the residual -- because, I mean, not just with our
12 information, but with BIA too, this becomes kind of a
13 life issue, because tribes tend to want the residual to
14 be as small as possible, to grow their side of the pie.

15 And one of the things we wanted to illustrate
16 about this, you have to be careful about not shrinking
17 that down too far -- here's your appraisal process.
18 This is a lot more complicated, but this is the
19 appraisal request, and this is subject to approval by
20 BIA officials. So we know that sometimes there's some
21 back and forth here that a tribe will request an
22 appraisal and BIA will then go to OAS and say, "Can you
23 do some scope work on this for us? So it's not like a
24 straight line here. There's complexity here, but
25 basically here's the flow. You get your appraisal

1 request and it goes to OAS Form 630-A or
2 self-determination or self-governance tribe, and they
3 actually do the appraisal report, or they contract out
4 with the appraiser to do the contract work. And then it
5 goes on to the regional appraiser, who has to do the
6 report review and approval, and that's deemed an
7 inherently federal function. This is what Geoff does.
8 This is Geoff's and this is funded by the residual.

9 Now, one of the reasons that you don't want to
10 shrink this component down too much -- right now it's
11 20%, and that will be part of what our consultation will
12 be about is that that's a reasonable amount. One reason
13 you don't want to shrink this down too much is because
14 this is the pipeline, and you could say, "Hey, we got a
15 lot more money over here; here's all the reports." And
16 they'll say, "Well, you bled me dry here; I've got two
17 people to do this great big ole' volume of stuff," so
18 we're going to have a problem getting here; we're going
19 to have a problem actually getting this finished and
20 transmitted to the client, because this part of the pie
21 was too small. So we have to be careful with that.

22 MR. LESANSEE: And this part of the pie you also
23 have other services, like technical assistance,
24 providing guidance for the preparation of the appraisal.
25 And then you have the administrative indirect cost

1 associated with running the operation, office space,
2 materials, salaries.

3 CHRIS JONES: I'm Christopher Johns and I'm the
4 self-governance coordinator from Oneida, Wisconsin. The
5 self-governance program, one of the problems, the
6 charges that has been leveled against it, is that self-
7 governance tribes are taking money from other tribes.
8 And it's never been proven, and it's completely
9 unfounded, and yet it's out there, and remains year
10 after year. Are the direct service tribes in this
11 process, where's that money coming from? Is that the
12 residual?

13 MR. FRAZIER: That money -- the money that OAS
14 uses to do appraisals on the direct service base, that
15 is money that is allocated to OST. So, like if you have
16 self governance money, that comes from a separate
17 appropriation. Like if Geoff does appraisal work for a
18 direct service tribe, that's OST money, appropriated to
19 OST, allocated to the region. So it comes from two
20 different sources.

21 MR. JOHNS: So if a self governance tribe in a
22 year does get an increase, where does that money come
23 from?

24 MR. FRAZIER: If they got an increase, that would
25 come from OST. Because we don't control OSTs money at

1 all. I know it's a little complicated, but like if we
2 had a self governance tribe that got \$5,000 from base
3 funding, OSG base funding, that's not -- that what -- we
4 refer to that as old money. So they get \$5,000 worth of
5 old money, we can't touch it. It goes straight to them
6 through OSG, and then they would get a supplement -- if
7 we did the calculation that they should be getting
8 \$8,000 for this appraisal work, then we'll say, "Well,
9 they're already getting \$5,000 from OSG. We need to
10 supplement that with \$3,000 of OST money to get them up
11 to that \$8,000 that they're supposed to get;" what the
12 secretary otherwise would have spent on them.

13 MS. MEISNER: If however, maybe three years down
14 the road, the workload went down, the calculation showed
15 you should only be getting four, well, you would
16 continue to get the five.

17 MR. FRAZIER: Yeah, because we can't touch that
18 five. If we do a calculation that said, they should
19 only be getting 4,000 but you get 5,000, there's nothing
20 we can do about that.

21 MR. JOHNS: And unrelated to that, we are a based
22 within a base budget '95, '96, we are locked in, the
23 amounts we negotiated that year and we have not changed
24 them. Because if you remember, in '96 or '97, BIA took
25 a big hit in funding and appropriations went down about

1 five or four percent, and they are just starting to
2 creep back up there. But every year I do the
3 calculations, we need our funding agreement. We have 35
4 or 40 line items, and some of them are still way above
5 what we could get now, because we locked in those
6 amounts so many years ago. But others are below that
7 amount. The problem is -- we do the calculation of a
8 year and we decide what is best to do for the tribe, and
9 since education and things are a priority and is still
10 high in those areas, we haven't changed. But the
11 regulations you referred to earlier, those --

12 MR. FRAZIER: Yeah. I can read it real fast.
13 This is 25-CFR 1000.106 and it's in the question-answer
14 format. Once a tribe consortium establishes a base
15 budget, our funding amounts renegotiated each year. No.
16 Unless otherwise requested by the Tribe consortium,
17 these amounts are not renegotiated each year. If a
18 tribe or consortium renegotiates a funding level, it
19 must negotiate all funding levels in the AFA, using the
20 process for determining residual and funding amounts.
21 So, it's not impossible to change it, but you have to
22 open up the whole can, every program. And everybody,
23 the tribes and the feds, both sides, they really don't
24 want to go through that process of opening up
25 everything. So the net effect tends to be that they're

1 not locked in per se, but they kind of are.

2 MR. JOHNS: The advantage of based funding, you
3 know how much money every year.

4 MR. FRAZIER: It's predictable, but you probably
5 are taking a hit. The thing is, you're right, that
6 there was that period kind of mid-90 where the budgets
7 were shrinking. And now, being locked into a base,
8 seems like a pretty good deal. But when the budgets
9 start going back up, it may be prudent to say, maybe
10 it's worth the effort to renegotiate everything.

11 MR. JOHNS: And we considered that, and it's
12 looking more and more attractive, particularly with the
13 recent change in the administration, and the attitude on
14 the part of Congress, that Indian programs in general
15 need more attention. So, have you avoided that problem
16 here? Because we don't want the BIA people coming back
17 and saying, well, you know, you opened this up or
18 renegotiated with OST for this --

19 MR. FRAZIER: No. And we talked with OSG about
20 it. We said, "Do you think this is a problem, us
21 opening up one single program for renegotiation?" And
22 they said, no, because as we say, we are not touching
23 the base amounts. There is a baseline, an item line
24 that you know for appraisals that you get money for,
25 we're not touching that. We are just looking at kind of

1 at larger statutory requirement, and saying, we would
2 like to give effect to both of these things. And this
3 statute says the secretary, the Department at large,
4 should be giving this amount of money to this tribe to
5 perform this function.

6 And we know that they're getting some from OSG,
7 but it may not be enough. So how can we supplement that
8 to meet the demand of the larger statutory requirement?
9 I mean it could be effected -- let's say you said, we
10 think the budgets are larger now and we think it would
11 be worth the time and effort to open up the whole thing;
12 we want to renegotiate everything. So let's say that
13 you -- they renegotiate appraisals -- I guess we would
14 have to be involved in that, but then your baseline gets
15 fixed at \$8,000. So that's a -- and then we go back and
16 we do our calculation the next year and we say, they get
17 8,000 in their base, based on your calculations, we say
18 that 8,000 is what you're supposed to be getting; you're
19 not getting anything from OST.

20 MR. JOHNS: I do have more questions.

21 JOSEPH SMITH: Joseph Smith, Director of
22 Reservation Resources, Standing Rock. I administer the
23 contracts for these appraisal services. Have you done
24 any numbers on what's existing now, based on some of
25 these formulas? Is it possible to do that, and how

1 would that change the regional budgets? Great Plains,
2 we only have two out of how many tribes that contract
3 for services. And if we did get more tribes
4 participating, what's that going to do to the regional
5 budget?

6 MR. FRAZIER: Well, if you got more tribes
7 participating it wouldn't effect your share. That's one
8 thing that's a little -- sometimes people get a little
9 confused about what the residual is or isn't. The
10 residual is not all the money -- in other words, the pie
11 is not, the 638 tribes and the rest is residual because
12 the feds are spending it. The residual is the amount
13 that the federal government would spend if every tribe
14 in the region contracted or compacted. In other words,
15 if Great Plains, every tribe said we want appraisals, we
16 all want to do appraisals. We want a contract or a
17 compact, the government says, okay, great; you're
18 working to hand out 80% of the -- whatever, but we're
19 gonna have to retain a certain amount in order to do the
20 review and approval, that or whatever is inherently
21 federal, that's the residual.

22 Now, there's another slice of money that like OAS
23 spends in direct service -- it's really, the pie is kind
24 of divided into three parts. You've got the 638 -- and
25 I'm using that 638 broadly for both contracts and

1 compacts -- you've got the 638 money. You've got the
2 IAF residual money which is 20%, and then in the Great
3 Plains you've got a substantial amount of money that's
4 spent on direct service. Now, if one of those tribes
5 who currently gets direct service appraisal performed,
6 they say, I want to contract or compact this much, then
7 we will calculate their share, and that money will move
8 from that part of the pie, to the 638 part of the pie,
9 but that doesn't effect the residual and it wouldn't
10 effect your share and it doesn't effect the budget.
11 It's like moving that money from one part of the pie to
12 the other.

13 MR. LESANSEE: What residual effects is, tell by
14 the formula, what is available to the tribes?

15 MR. FRAZIER: The overall amount, the overall
16 percentage of the residual, that does effect -- like if
17 that was 15%, that would give -- make a little more for
18 every tribe. If it was 25 percent, it would mean a
19 little less for everybody in the tribe.

20 MR. JOHNS: Are you looking to establish one
21 overall residual percentage or are you going to
22 establish or looking to set up residual for each of the
23 12 areas plus --

24 MR. LESANSEE: Well, currently by policy we are
25 operating under 20% across the 12 regions. But in the

1 statutes, it requires a justification for the residual
2 in their format, as to what is necessary to carry out
3 the functions and provide justification for that.
4 That's what we've done in the past. But since, in 2000
5 the 20% was established.

6 MR. FRAZIER: 2005, I believe.

7 MR. MEISNER: But we don't know the appraisal --
8 Lee knows, because he's involved in other 628 programs,
9 20% is a pretty decent residual.

10 MR. FRAZIER: Well, if you go to a negotiation
11 like for a new tribe coming in -- sometimes the residual
12 is like 60 or 65%.

13 MR. LESANSEE: But we've done some analysis in the
14 past, and 20% for the small tribes or small regions,
15 overall your workload is low. They have the biggest
16 impact of 20%. Because if when one of the bigger tribes
17 take on one of the programs, they take most of the share
18 of the money available to the region, and then that
19 20% is not very much to put on their (inaudible). But
20 the big regions that have a huge budgets, it doesn't
21 impact them as much, but it does impact them if it's
22 just straight line across, because it doesn't take into
23 account what we discussed earlier, the amount of review
24 work that's necessary to carry out the federal
25 functions.

1 MR. JOHNS: With a straight 20%, there may be
2 inequities between the regions. You have heard this
3 before, the Midwest region is underfunded, understaffed,
4 and they downplay over the last ten or 15 years,
5 compared to all the other regions per capita amount they
6 bring in is less. And I'm just concerned that we might
7 actually benefit by a straight 20%, because we may not
8 have to use that amount of money, but 20% in another
9 region, that might be grossly under. Are there going to
10 be those kind of variations between regions? It almost
11 seems like there has to be.

12 MR. LESANSEE: If you do the narrative approach
13 where you negotiate the residual, there's a great
14 variance from region to region, program to program, and
15 so on. And then you have different interest groups
16 negotiating, because those tribes that aren't
17 participating in the 638 program, of course, want to
18 assure that adequate services are provided to them. And
19 then you have those tribes that are participating and
20 want the bigger share from the previous years. And then
21 OAS, the government also has an interest that they want
22 to keep enough money to carry out their functions. So
23 it's a negotiation process. But the 20% kind of
24 eliminates that.

25 MR. FRAZIER: And the residual doesn't have to be

1 a percentage. . It's kind of smart to make it a
2 percentage. Because in Alaska they ran into a problem
3 where they negotiated residual, that was a flat dollar
4 amount, which made -- and the amount made a lot of sense
5 back in 1995, 2005, a decade later, they didn't have
6 enough money to pay for one FTE. So it's kind of
7 smarter to make it a percentage, so that it naturally
8 increases as the budget increases.

9 MR. LESANSEE: Some of the challenges that I think
10 that was put upon our importance on looking at the
11 tribal shares formulas that currently exist are,
12 probates, and the Midwest is one region that I think the
13 Indian consolidation office -- actually the
14 Administrative Law Judges are initiating a lot of
15 probate orders for that region for that probate to
16 settle actions, and it's increasing the work activity.
17 And we had to meet with BIA last week, and they're
18 anticipating that work to increase, and thus increase
19 our work requirements or our appraisal requirements.
20 That's one thing, and of course fractionation is a big
21 problem. It's a big issue, and that has direct
22 relationship as to how much work we do.

23 Geoff from the great regional office and his
24 predecessor, they have to go through automated valuation
25 models, because of the great amount of work that's

1 necessary here. In other regions, that's going to be a
2 big impact, like say Rocky Mountain and Northwest, they
3 do conventional valuations, and their cost is high.
4 Their FTEs is greater than Geoff. Geoff has three
5 people on board, appraisal positions where Northwest has
6 six, Rocky Mountain has six. Those are some of the
7 challenges that may trigger looking at the tribal shares
8 formula. The cost of appraisals and cost of developing
9 appraisers is another thing. The requirements for
10 qualifications of appraisers has gone up. And so there
11 might eventually -- I'm not sure, there might be a
12 reduction or hopefully not -- but the available
13 resources outside the private sector to contract to. So
14 when you have a lower supply of appraisers, your cost
15 will tend to go up too probably.

16 MR. JOHNS: If a formula is developed, can you see
17 -- I'm not asking, will you make it this way, but could
18 you see the ability for regions to pick and choose among
19 those criteria. Because some simply don't apply in one
20 region, and they do in another. And to be fair and
21 equitable, across the board, they need to take into
22 account all those differences.

23 MR. LESANSEE: I think that question came up in
24 Oklahoma. Because one formula may not fit the entire 12
25 regions, or where there are so many variances. Yes, we

1 will take that into consideration and take comments in
2 that regard for the need to look at each individually or
3 specific criteria or situations.

4 MR. FRAZIER: I guess it's possible. I mean you
5 could have sort of like a cafeteria formula where you
6 say, here's the five possible components, and for each
7 region, which components are you gonna use and what
8 weights are you going to assign to those components. So
9 like in the Midwest, really it only makes sense to use
10 three of these components, and give this weight to this,
11 and this weight to this. Northwest says, we want to use
12 all five components and here's the weights we want. You
13 could have a cafeteria approach.

14 MS. MEISNER: But with the underlying theme that
15 you provide what the secretary would have spent --

16 MR. FRAZIER: That's kind of the driving theme for
17 us, whatever formula you come up with, it should be
18 pretty close to the fictional situation there with, what
19 if it was all direct service; what would the secretary
20 be spending on each tribe. And it could be that
21 approach would most accurately capture that state of
22 affairs.

23 GEOFF OLIVER: Is there going to be a review set,
24 but say you're going to set a review down the road?
25 Because there's two different things that could happen.

1 It could get too much money, and this is what happens in
2 Sisseton when I do my review of the program monitoring
3 is, they're using the money from two or three contracts
4 ago, and they have got a bunch of carry-over. So what
5 if there was a tribe that didn't have enough money? So
6 are these formulas set in stone, or could you review
7 that down the road and say, well, you need to look at
8 this again?

9 MR. LESANSEE: Well, it depends on which formula.
10 I mean, the workload formula would probably follow that
11 change, the need for one tribe to have more, and then
12 others to maybe have less in one particular fiscal year
13 to shift that work load where it's needed -- funding
14 where it's needed to carry out the appraisal services.

15 MS. MEISNER: What we found is, one of the reasons
16 I personally want to keep pushing this project is
17 because, for example, we have one tribe up in Northwest,
18 when they took over the program, they did not anticipate
19 an influx of 400 probate requests. So if we recalculate
20 our appraisal shares like we're looking at, our tribal
21 shares, if that were to happen, that tribe would come
22 back and say, "Look, I've got this tremendous
23 requirement here that we weren't anticipating, but we'd
24 even be in a position to give if we had the funds
25 available. Where right now we are not able to do that.

1 For example, when you yourself in your region needs an
2 input of new money, there's nothing to stop us from
3 doing that if we have it. But where if the tribe comes
4 to us, again, another reason for trying to get this
5 along, so that they can take advantage of the same
6 things that you guys took advantage of when you need
7 additional money.

8 MR. FRAZIER: One of the things we talked about
9 too is, typically what we do -- we might have a problem
10 doing this in accordance with the law, because if you
11 have a tribal share, we're supposed to give every bit of
12 that to you at the front of the year. But we thought it
13 might make sense for situations where there's unexpected
14 demand spikes within a year, to like distribute the
15 money in a half basis. Say, you're supposed to get
16 \$10,000. Front of the year, we'll give you \$5,000, and
17 we will hold 5,000 as part of a reserve. Now, at the
18 end of the year, if everything plays out like normal,
19 here's your 5,000 again. But if Tribe A over here,
20 another tribe, got some huge amount of probate requests,
21 that skews their demand, we may adjust that reserve and
22 award you a little bit less, because this tribe had a
23 huge demand spike.

24 MS. MEISNER: Would the other half that we talked
25 about is the possibility, say if we determined that that

1 20% residual was the proper percentage, we would hold
2 back that additional 5% for that reserve that the
3 tribe's amount of allocation does not impact it. And if
4 at the end of that year, if everything went well --

5 MR. FRAZIER: Then you distribute the reserve.

6 MS. MEISNER: Then we distribute it based on the
7 distribution percentages.

8 MR. LESANSEE: The reserve, I think we could use
9 it right now especially for that Northwest tribe. We've
10 got close to 700-some probate appraisals that the Tribe
11 can't get to because of the limited human resources. So
12 if we had a reserve like that, we could infuse that
13 additional money to that problem and try to complete
14 that project.

15 MR. FRAZIER: We have to be careful, again, to
16 stay within the law. Because the law doesn't provide
17 for kind of a slush fund reserve. It says, you know,
18 there's your residual, and then there's money available
19 to the tribes. So, like if we had a reserve, we'd have
20 to structure it in such a way, so that it was clear that
21 this is tribal money, and if it's not used for appraisal
22 activities, that it doesn't get swept back up into
23 administration, it gets distributed back to the tribes.

24 MR. JOHNS: You mentioned you're gonna try to have
25 the residual report out by March?

1 MR. FRAZIER: It's in the Regs that it goes out
2 March 1st of every year.

3 MR. JOHNS: So this isn't going to effect FY 2010?

4 MR. FRAZIER: No.

5 MR. JOHNS: How do you see this whole process
6 playing out then? You have four meetings and then
7 you're going to do one big national meeting or publish
8 something?

9 MR. FRAZIER: We haven't decided yet. This is the
10 second of six, regional. At that point we're gonna
11 gather the input we've gotten from tribes so far, and
12 decide where we're going to go from there. One
13 possibility is we say we have enough information and we
14 go ahead and make a final federal decision. Another
15 possibility is we may need a second round of regional
16 consultations. Another possibility is we have one more
17 big regional consultation, maybe in Denver, somewhat
18 central that everybody could get to, and do one more
19 final consultation and then make a final federal
20 decision. But we need to sort of finish the first six
21 before we decide where we're going. As far as time
22 frame, I think we wanted to try to get it done by the
23 end of this fiscal year, but we don't --

24 MR. MEISNER: (Inaudible) working with the tribes
25 that are hurting so bad. There were a few, if we don't

1 do something for them now -- we've written letters back
2 saying that we recommend such and such. If we were able
3 to incorporate this new tribal shares formula, whatever
4 it is.

5 MR. FRAZIER: Yeah, that's one thing to consider.
6 We feel like we're bound by the demands of the executive
7 order on tribal consultation and we want to do good
8 faith consultations. The other side of that is that
9 based on our calculations, tribes aren't getting -- 638
10 tribes aren't getting the money they're supposed to be
11 getting. And the sooner we recalculate the shares, the
12 sooner they get -- so it's kind of like, do you want to
13 get your more money this year or wait another year.

14 MR. LESANSEE: Any more questions? On behalf OST
15 and the Office Appraisal Services and the Office of
16 External Affairs, which are teaming up to bring this
17 issue forward to the tribes, we appreciate your
18 participation and coming all this way, particularly you,
19 Chris, from Wisconsin, and you coming across the state
20 to meet with us. I think it's an important topic, and I
21 think if we have your input, your participation, I think
22 we can reach a formula at the end, and at least it would
23 be better than what we have now.

24 Thank you, very much.

25 MS. MEISNER: And also there's contact information

1 on the OST website, they'll tell you there.

2 MR. LESANSEE: There's two sessions, a morning
3 session and an afternoon session, and hopefully they'll
4 be some people coming this afternoon from the region.
5 You are welcome to come again this afternoon if you want
6 to. Thank you. If you think of anything over lunch,
7 you can come back with your questions.

8 (Adjournment.)

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1 STATE OF SOUTH DAKOTA)

2) SS.

CERTIFICATE

3 COUNTY OF PENNINGTON)

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5 I, JEAN M. CARLSON, Certified Court Reporter, in
6 and for the State of South Dakota, do hereby certify that
7 the foregoing 50 pages, is a true and correct transcript of
8 my stenotype notes, as taken by me in machine shorthand and
9 thereafter transcribed.

10 Dated at Rapid City, South Dakota, this 18th day
11 of September, 2009.

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17 JEAN M. CARLSON
18 Court Reporter
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