1 TRIBAL CONSULTATION MEETING

2 REVISING TRIBAL SHARES FORMULAS FOR

3 THE REAL ESTATE APPRAISAL PROGRAM

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PROCEEDINGS: Rushmore Plaza Holiday Inn
9 505 N. Street
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14 APPEARANCES: Debbie Meisner
Management & Program Analyst, OAS

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Frank Perniciaro
16 Management Analyst, OEA

17 Lee Frazier
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Eldred Lesansee
19 Deputy Chief Appraiser, OAS

20 Deb Alder
South Dakota Representative

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MS. MEISNER: Good afternoon. My name is Deb Meisner and I'm with the Office of Special Assessment. Just some introductions before we get started. We have Eldred Lesansee who is the Deputy Chief Appraiser. Lee Frazier, who is with the Office of Internal Affairs; and Frank Perniciaro in the back, he's also with Office of Consumer Affairs, and Geoff Oliver, as you all know is the Great Plains representative.

MR. LESANSEE: Thank you Deb. This is the second session of the series of six tribal consultation of tribal shares that we are hosting across the country. We started with Oklahoma City on June 30th, and this is the second one here in Rapid City. We'll be heading up to Portland on the 29th, and then Billings, Montana. We added Anchorage recently, at the request of the Alaska natives. And then we will wrap up the tribal shares sessions in Albuquerque on the 18th of August. As we go from one session to the next, we'll listen to the tribes, gather the information, and hopefully have a good discussion and compile all the information and decide from your comments whether there's a need for an additional consultation as a follow-up to what we're doing now.

This is gathering information and having discussions over the tribal shares issue. We're

presenting the issue as far as the problem of having the various tribal shares formulas across the country, and not having uniform information. And in some cases, we don't have information on tribal shares that we're very solid on, as far as background information. And we've heard across the country from the tribes, that there's some concerns about the current formulas that are in place. So, we felt that over the years by hearing from the tribes, that there needs to be a change, and a look at the tribal shares formula and perhaps explore possibilities on a new formula that will be for equitable to the tribes that are participating in the program and those that wish to come on board to participate in the programs. The purpose of the consultation is to discuss ideas and developing a new tribal shares formula. And as you know, the tribal shares program for appraisals, the Indian lands evaluation program initiated back in BIA when we were part of the BIA office. And since then I think we've had a few extra tribes come on board to participate in the program, but the majority of them probably originated back in 1995 or so.

We will present a little bit of history and present the tribal shares formula and then maybe at the end we can have a question and answer session, and

1 hopefully it will stimulate some questions and that
2 would help us to lead towards maybe a new tribal shares
3 formula. Lee and I will alternate, as far as the
4 presentation goes.
5 Little bit of background. As I mentioned, in 1995
6 the BIA developed region-by-region formulas to allow
7 formulas used to allocate tribal shares for the
8 appraisal program. When the appraisal program was
9 transferred from the BIA to OST in 2002, OST and BIA
10 agreed to continue the region-by-region formulas to
11 maintain continuity. We have how many formulas?
12 MR. FRAZIER: There's 12 regions and I think the
13 formulas we know about are around nine or ten.
14 MR. LESANSEE: For your information, and in the
15 Great Plains Regional Office we've had difficulty in
16 locating source documents. That's one of the issues is
17 over time, for one reason or another, that we can bring
18 -- I'm not sure what happened.
19 UNIDENTIFIED PERSON: What did you say you had
20 difficulty locating what?
21 MR. LESANSEE: The source documentation for the
22 tribal shares formula for the Great Plains Regional
23 Office.
24 MR. FRAZIER: We know a tribal share was
25 calculated, but we don't know what the basis of that

calculation was. So for the other reasons, we have some source documentation or we have people who are around back then who could tell us, "Oh, yeah, we did it on this basis," and we don't have that for the Great Plains.

MR. LESANSEE: The existing tribal shares formulas, there's many different formulas across the 12 regions. We've got the equal division, the land-based division, population-based division, workload-based division and hybrid division. Here's the characteristics, our thoughts about them. Equal division is easy to calculate, but may not be in compliance with statute. And then your land-based, there's still no strong correlation with appraisal needs. And then population-based, same thing, no strong, direct correlation with the amount of appraisal needed by the tribes. And then your workload-based division, that seems to have a direct correlation. And it will probably be most tied to, as a change need for appraisals fluctuates from year to year, but the numbers, of course, will justify or support additional funding for particular tribes, whose numbers are going up because maybe the American Indian probate format, we believe that triggers a lot of activity for a particular tribe. That may need additional funding to support the

1 extra load of appraisals, or the extra need for
2 appraisals.
3 Then you have the hybrid division and that's
4 several weighted components. It could be population,
5 land-based, equal share. We will show each of these in
6 more detail, but this is probably the most complicated
7 one. And there's probably no direct correlation, as far
8 as, again with the amount of appraisal services needed
9 by the Tribe. This is used by one region in the
10 southwest. I guess the idea behind that was partly was
11 because by having weighted components, you have
12 different factors that the smaller tribe might have.
13 Some assurance, that's some part of the pie. The
14 regional budget, that's available to the tribe for
15 contracting and compacting.
16 MR. FRAZIER: Some of the reasons that we have for
17 wanting to revise the shares is, one of the biggest
18 problems is that the majority of the shares were
19 calculated back in 1995, and they have not been
20 revisited since 1995, so they're not formally locked in
21 place. No one has said that these may not change, but
22 in fact they have not changed. They were calculated and
23 they stayed the same, even as regional budgets for
24 appraisals have gone up, the tribal shares have stayed
25 the same. And we think that that's something that

1 should be fixed.

2 Next, they have not been in step with regional
3 increases. The third one, there may be inequities
4 between tribes that have contracted or compacted at
5 different times. What we mean, for instance, take an
6 equal shares division. And the Midwest uses this, I
7 think there's 27 tribes in the Midwest. What they did
8 is they took the available regional budget and divided
9 it into 27. Every tribe gets one-27th of the available
10 budget. No matter what your appraisal needs were,
11 here's your one-27th. But if you contracted or
12 compacted in 1995, they took the '95 budget and divided
13 it by 27; here's your one-27th of that budget, and it
14 has been that way for every year. If you came in, in
15 2001 from the Midwest Region, and said, I would like to
16 contract or compact this program, then they took the
17 2001 budget, divided that by 27 and most likely the
18 person that contracted or compacted in 2001 has a bigger
19 tribal share than the person who contracted or compacted
20 in '95. So those are the kind of inequities that we
21 would like to take a look at.

22 MR. LESANSEE: Benefits of revising. Revised
23 formulas will ensure uniformity and transparency in
24 determining tribal shares and the funding residual for
25 the inherent federal functions. And that's also is

later on, also as you see later on regards residual functions, the IFF.

DENISE MESTETH: Could I ask another question? Before we go further into the residual part, could I ask a question about, on the appraisals for the stands, was that brought over from the Mad system? Is that the same one? In the OST land, Oglala Sioux Tribal Land, we have a program called the Land Exchange Program, and what it does is it offers land to people that want to consolidate their fractured interest. Well, that fractionated interest is appraised in a different manner that the whole tribal land is appraised in. So, to me, if that was my land exchange, I would say that's apples and oranges there. Is there any way that we can do that fairly, by appraising it in the same manner, and in what you would call the appraisal techniques?

MR. LESANSEE: I guess the evolution of the Mad system and so forth, it's a difference in the approaches. The automated valuation that Geoff uses is based on income, capitalization (inaudible), where the conventional appraisals might be based on something (inaudible.) And they should have some degree of similarities, because the data should reflect, or should be representative of the market, as far as the local market for that type of property. The question was,

1 should there be consistency in conventional evaluations
2 (inaudible.)
3 GEOFF OLIVER: The ABMs that we use right now
4 is -- - really the definition of an ABM is where you
5 value 100 or 1000 properties all at once. We value one
6 at a time, but we do it very quickly, and so it's based
7 on -- we pull market data, and we use that information.
8 So whether or not it's a full appraisal, or one that we
9 do, we call undivided fractionated appraisal system.
10 It's really similar. We compare them to -- we have a
11 full appraisal, and then there's one of these. And
12 although there are discrepancies, it's within a
13 reasonable parameter.
14 DENISE MESTETH: So do you use some of the factors
15 in applying the appraisal to the tribal whole track --
16 some of the factors using that technique of appraising
17 are used in appraising the allotted lands, the
18 fractionated interest?
19 GEOFF OLIVER: Yeah.
20 DENISE MESTETH: I wonder if you could help me out
21 and identify those factors that are similar and the ones
22 that are different, and then send me a letter?
23 GEOFF OLIVER: Sure.
24 DENISE MESTETH: This would finish up a land
25 exchange or be back to the drawing board for that

1 person, be a back-up. And one more question on the
2 fractionated interest on appraisals. Is it true that
3 our fractionated interest is valued less, because it is
4 fractionated interest?
5 GEOFF OLIVER: No. In the appraisal world there's
6 been, on the outside, there's been studies done that
7 indicate that once you get past a highly fractured
8 track, it becomes less than 100%. But in our world, I'd
9 rather value it near or close to a 100% and then if it's
10 higher and benefit to the landowner. As an appraiser we
11 don't advocate either for or against on either side.
12 DENISE MESTETH: Well, wasn't there a lawyer that
13 did that, that said -- there was a Smith, I think it was
14 his last name, that went and did some appraisals. I
15 don't know if he was somebody that had a final say on
16 how those appraisals will be handled, but they were
17 going to be valued less than it would if it were a
18 single owner. Because of the difficulty of getting it
19 leased and trouble getting it sold, all the signatures
20 and everything that's required for fractionated
21 interest.
22 GEOFF OLIVER: Well, the theory behind buying and
23 selling fractionated interest in the fee world is for
24 one, if we had the comparable data and let's say we had
25 all these different sales of fractionated interest that

are sold by themselves -- I've seen fractionated interest that were combined and sold like three or four different deeds to the same person, so they are essentially buying 100% -- so I've never seen a fractionated interest sold by itself to where you'd have to -- finding undivided interest sales in the fee world is difficult, and nearly impossible. I've never seen one. I've seen three or four undivided interest sold together to the same individual. And so that would be considered a comparable sale.

If we have a data set indicating that there was some fractionated interest that had been sold, individually, then we could figure out, well, from that, is there a decrease or a lower value if we compare to the whole. And at that point we would use those sales to come up with any sort of discount or fractionated interest. But without the market data supporting that, we don't want to arbitrarily discount our fractionated appraisals. So I'd rather err on the side of valuing it higher than throwing some sort of discount that isn't market supported.

MR. LESANSEE: You are right, there was a study done two years ago by a local appraiser here in Rapid City, Spearfish, and he was contracted by the Department to do a study whether fractionation effects market

1 value. And a lot of his market data, if I remember
2 right, a lot of his information was outside areas across
3 the country. A lot of it was in Texas. And I think he
4 did come up with a conclusion and recommendations of
5 discount, after a certain point. But all we asked was
6 he was reluctant to apply that, because there was no
7 market locally around the reservation that had a direct
8 relationship to what was happening in the outside. But
9 logically it makes sense, because if you had to go to a
10 thousand people to get consent to do something, it would
11 slow down the process, and the costs goes up. And when
12 you want to sell the property, what they call liquidate,
13 you want to sell, you have to get consent to do that.
14 If you want to lease, you have to get consent from of
15 the majority owners, depending on what consent scale you
16 use.
17 In the fee world -- that partial interest
18 valuation textbook, it talks about, you have all these
19 lawyer fees and you have all these management costs and
20 so forth, transfer fee costs associated, if you want to
21 transfer a fraction of interest. And that runs up the
22 costs, and so your fractionated interest should be
23 directly be less than the whole property, one over one
24 value. But in the government world, a lot of that is
25 formed by the United States Government and there's

transfer fee costs and management costs and so forth.

DENISE MESTETH: So the fee land should be the appraisal weight formula, that should be higher than fractionated interest then. Takes more time to handle, when you look at it that way.

MR. LESANSEE: Well, actually if the individuals had to incur the cost of management, liquidation and all that, it would be very expensive. Like Geoff said, without the market evidence to provide a supportable adjustment amount, it would be arbitrary, and we'd be pulling numbers.

GEOFF OLIVER: Back to your question though, if you were to calculate -- because the appraisal program I use, you can't calculate, it won't let you calculate a one-over-one interest. If you do, it comes up with an error and it won't print the report. So it has to be fractionated. If you calculate it out to come up with 100% interest, and you compare that to another appraisal of the same property, and the fractionated is lower, that's merely coincidental. If you get three or four appraisers doing the same appraisal, you're gonna come up with different values, just because of different methodology, but it's going to be in the same ballpark.

And what our thoughts are, I was doing some for Pine Ridge or Cheyenne River, but the value that came

1 out at the bottom was like 26 cents. So if you're off
2 let's say two or three percent from the full appraisal,
3 does that filter down all the way to that 26 cents? It
4 going to be negligible. So that's where we feel any
5 discrepancy or difference in value is reasonable, what
6 we call it. Does that answer your question?
7 DENISE MESTETH: No.
8 MR. LESANSEE: And the other concern was that the
9 UFAT system produces something other than what, if you
10 would do a conventional valuation. Wasn't that the
11 primary question, why is there a difference?
12 UNIDENTIFIED PERSON: Why is there a difference
13 used in a fractionated manner versus tribal tracks.
14 GEOFF OLIVER: Right. In a full appraisal the
15 appraiser takes into consideration location. Let's say
16 he's using different sales that go back a couple years.
17 There might be a time adjustment. There might be roads
18 that add value, but what we take is statistical
19 information -- like in Shannon County we've got an
20 average value of pasture land, and then we've got the
21 income that could be potentially produced on that per
22 acres. We come up with a cap rate and we apply that
23 back to the acreage from the subject property or the
24 allotment, and it calculates that, based on an average
25 in the county. So that may be higher or lower than what

1 the appraiser comes up with, who would do a conventional
2 appraisal.
3 DENISE MESTETH: Does income value versus the
4 sales value, the sales value is used for tribal whole
5 tracks? This is on one of the land exchanges and then
6 the income value was used on the fractionated interest.
7 GEOFF OLIVER: Like Eldred was saying, they should
8 be pretty similar.
9 DENISE MESTETH: That's what I need to know from
10 you, Geoff, if you can get me a letter indicating the
11 similarities between the two different valuations.
12 GEOFF OLIVER: Yeah, because an appraiser, if he
13 uses all three methodologies in his report, the cost
14 approach, if there's improvements; the sales comparison
15 and income, if they come up equal, I would question that
16 appraiser, really.
17 MR. LESANSEE: What we do in situations where
18 there's divergency or differences in value between the
19 different approaches, is a reconciliation process.
20 Looking at the assumptions within the approaches the
21 data is the key. Which data approaches gives the most
22 reliable opinion of value.
23 GEOFF OLIVER: Does that answer your question?
24 DENISE MESTETH: You answered my question, yeah.
25 Now I just have to relay the message back.

1 MR. FRAZIER: It's the statute at 25 USC Section
2 450 that controls how the allocations are made for 638
3 programs. And the question that's dealing with is like
4 if a tribe contracts or compacts a program, how much
5 money should they get. What the language says is the
6 amount of funds provided under the terms of the
7 self-determination contracts entered into pursuant to
8 this subchapter shall not be less than the appropriate
9 secretary would have otherwise provided for the
10 operation of the program or portions thereof for the
11 period covered by the contract. And by the way, this is
12 dealing with Title I contracts, but there are similar
13 language in the Title 4 self-governance compacts. And
14 the way we interpret this is that, if you contract or
15 compact a program, whatever the money, whatever money
16 the secretary would have spent on your tribe to perform
17 that function, if it was direct service, you should
18 receive that same amount of money. And so that's kind
19 of like the main statute governing how we plan to, how
20 we think shares should be allocated, is what would the
21 secretary otherwise have spent on you if you were a
22 direct service tribe.
23 And a couple of other -- this is actually from the
24 CFR Code of Federal Regulations, not the statute, but
25 it's the law, and it's having to do with the residuals.

1 Again, some of you probably already know this, but the
2 residual is the portion of the budget that the
3 government holds back to perform the inherently federal
4 functions. And another part of the record will say --
5 well, it says right there, "BIA residual funds are the
6 funds necessary to carry out BIA residual functions.
7 BIA residual functions are those functions that only BIA
8 employees could perform if all tribes were to assume
9 responsibilities for all BIA programs that the Act
10 permits."
11 So, for instance if say the appraisal program for
12 Great Plains, if every tribe in the Great Plains Region
13 contracted or compacted out that function, then what
14 would need to be held back by the government in order to
15 perform the inherently federal functions, like review
16 and approval of the appraisals. We'll talk about this
17 later, but the default residual is 20%, that was decided
18 four or five years ago. So like that would be held back
19 -- if every tribe or every tribe either contracted or
20 compacted out appraisals, 20% would be held back to
21 perform the residual function, and 80% would be
22 allocated to the tribe. Yes.
23 DENISE MESTETH: So it would have to be all of the
24 tribes in that Great Plains Region?
25 MR. FRAZIER: Right.

1 DENISE MESTETH: So what if only two tribes --
2 MR. FRAZIER: If only two tribes -- well, whatever
3 formula you used, you would have -- let me take an
4 easier region, Midwest, because they equally divide it
5 up. So you have 27 tribes, and two of them take it,
6 then what you would have, you would have a pie that
7 looks like this; you'd have a pie with slices, 20% for
8 the inherently federal function, and the rest of the pie
9 is going to be divided into 27 equal slices. Two of the
10 tribes that are either contracting or compacting, they
11 will get two of those equal slices, and the other 25
12 slices will be used by the regional appraiser to give
13 direct service to those tribes.
14 DENISE MESTETH: What other tribes in the Great
15 Plains Region have contracted the appraisals.
16 MR. FRAZIER: There were only two in Great Plains.
17 We have two contracting tribes, Standing Rock and
18 Sisseton-Whapeton.
19 RITA MARCHAND: So how did they divide up that
20 money? Because like Cheyenne River -- Standing Rock is
21 a huge tribe compared to Sisseton. So I'm surprised
22 they didn't get equal shares. Did they?
23 MR. FRAZIER: I don't -- I don't think that their
24 share is different. I don't think this was an equal
25 division region.

1 MR. LESANSEE: Can you identify yourself?
2 RITA MARCHAND: Rita Marchand Pine Ridge Agency.
3 We have little tiny tribes and then we have big
4 tribes.
5 MR. FRAZIER: And that's one of the arguments
6 against an equal division. It doesn't really make
7 sense. There are regions that uses -- Midwest is the
8 primary example and they just equally divide it up.
9 MR. LESANSEE: In fact, Christopher Johns
10 mentioned that the Oneida Tribe, their objective was to
11 take control of the program rather than how much was
12 available to them.
13 MR. FRAZIER: Yeah, for them it was a matter of
14 they want tribal control of the program no matter what.
15 So it wasn't so much a money issue for them.
16 This is another portion of the Federal Regs, the
17 second one. And it's something we haven't been in
18 compliance on, but we plan to come into compliance on.
19 And it's -- every year -- I will just read it out.
20 "Residual information will consist of residual functions
21 performed by the BIA, brief justification why the
22 function is not compactible, and the estimated funding
23 level for each residual function. Each regional office
24 and the central office will compile a single document
25 for distribution each year that contains all the

1 residual information of that respective office.
2 "So starting next year around March, we will be
3 disseminating to all the tribal leaders, a list of the
4 residual functions of OST-OAS, saying like this is what
5 we consider inherently federal function, this is the
6 funding level we use to fund that inherently federal
7 function, and we will begin distributing that every
8 year. Standing Rock and Sisseton do not have an equal
9 allocation, so I'm not sure what formula they used. We
10 weren't able to locate that, but it clearly wasn't an
11 equal division.
12 DENISE MESTETH: Are they contracting these
13 appraisals because they have to do it in consolation of
14 the program or they want to have more control?
15 MR. FRAZIER: Every tribe is different. Some
16 tribes want the money. Some tribes, they look at it and
17 it's not enough money. They actually have to supplement
18 the money they do get with their own tribal money, but
19 it's important to them for various reasons that they
20 control the program. So they'll take it even if it
21 doesn't make sense on a purely economic basis.
22 DENISE MESTETH: So Standing Rock has their own
23 foundation program for that?
24 GEOFF OLIVER: I believe that's completely
25 different, because we do the appraisals and in-house for

1 our U-FAT Program. We do those.
2 MR. FRAZIER: NOW Rosebud does have their own kind
3 of consolidation program.
4 DENISE MESTETH: That would cause a conflict of
5 interest anyway, right? "Let me appraise your land,
6 because I'm gonna buy it."
7 MR. LESANSEE: Yeah, that is a good issue. What
8 the tribes do as far as insulate or protect any variance
9 from one tribe to the other --
10 MS. MEISNER: You have to remember that those
11 appraisals are then used and approved by a federal
12 employee. So there is that check and balance.
13 GEOFF OLIVER: Right. I think the misconception
14 on a tribe having their own appraisal program is they've
15 got -- this does happen where they have got a tribal
16 member who is an appraiser, like a guy up in Yakima and
17 he's a tribal member of the Yakima Nation, but he can't
18 do an appraisal, review or approve anything that he's
19 related to. So he can do it for anybody else. That's a
20 tribal member, and that's not a conflict of interest.
21 MR. LESANSEE: And if he does, he has to disclose
22 he has a personal interest in the property, so the
23 reader will know the nature of it. But it would not be
24 wise to do that.
25 GEOFF OLIVER: And even one of my contractors, in

1 Standing Rock and Sisseton, they have their own contract
2 appraisers who have no affiliation with the tribe. But
3 on Cheyenne River our contract appraiser owns land on
4 there, in trust land, and his sons and whatever, he's
5 not able to do those appraisals, so we have a
6 subcontractor. So even if it's contracted on the
7 outside, you run into it, but we address that.
8 DENISE MESTETH: All these have to be reviewed by
9 the Office of Special Trustee?
10 MR. FRAZIER: Yeah. That's why it's inherently
11 federal. Because the government -- that's sort of the
12 rule of thumb about, why something is inherently
13 federal, or inherently governmental. If someone is
14 executing federal laws in a way that directly effects
15 your life, liberty or property, then that ultimate
16 decision has to be done by a government employee. The
17 government cannot contract that out, either to a tribe
18 or to someone in the outside. If that final decision
19 has to be made by a government employee, it's inherently
20 governmental, inherently federal. So if you take the
21 program, you can contract out to someone to render an
22 opinion on the valuation, but that final decision, that
23 review and approval, that, "Yes, this is what it will
24 be." Has to be done by a government person.
25 MR. LESANSEE: Getting back to the current

1 residual, back in 2004 or 2005 the former chief
2 appraiser for the Department of the Interior established
3 by policy, 20% residual, and that is currently applied
4 across the 12 regions. What will we do in the future?
5 OST will need to ensure that the residual is sufficient
6 to fund those activities which, by law, must be carried
7 out by federal officials, inherent federal function.
8 MR. FRAZIER: This is the first of some different
9 ways, what we call ideas, basically different
10 methodologies, ways one could go about allocating the
11 tribal shares. The first one -- and this is the one
12 that I think is used by Northwest and eastern Oklahoma
13 is the workload-based, purely a workload-based formula.
14 Here and the way you calculate it is -- let me go to
15 this part. You take your average tribal workload, which
16 is -- we say average, because you normally average over
17 a number of years. You could do it over one, or five or
18 whatever you want. The more years that you include in
19 the average, the smoother your demand curve is. If you
20 have a one-year -- if the Tribe said five appraisals in
21 one year and then ten and then 15, and then zero, your
22 demand would be very spiky. Whereas if you averaged it
23 over a number of years, the demand curve is going to be
24 a little smoother.
25 So you take a tribe's average workload, and you

divide it by the average regional workload, and that's going to give you a percentage. What's the ratio of this tribe; what percentage of the regional workload is this tribe doing, on average. When you get that percentage, then you multiple this number, this formula here, which is the available regional budget, minus the -- like if it was a $100,000 regional budget, you'd take 20% off, that would leave you with $80,000 as an available budget. And you would multiply that by this number you've calculated, which is your average tribal workload, divided by your average regional workload and that would give you the tribal share. Again, this is a strictly workload-based formula.

As I mentioned before, you would average it over a set number of fiscal years to smooth out the demand spikes. And this is kind of one more of the important points and we talked about before. OST intends for this formula to be dynamic. And what we mean by that is that it will be recalculated every year. So, instead of us calculating what your tribal share would be in 2009 and you'll get for the next 20 years, every year we would revisit this. So if the budget goes up, then we have to recalculate the number. Even if your percentage of the regional workload stays about the same, this number will change, so your share is going to go up.

1 This is the type of formula now used in eastern
2 Oklahoma. They have a strictly workload-based formula
3 and Northwestern has -- Pacific has workload-based.
4 Here's a hypothetical example on a very small region
5 that only has three tribes. Tribe A, as you can see
6 here has a pretty steady high demand over three years;
7 35, 30, 31. Tribe B, they are kind of ramping up. They
8 started with zero and went up to two, and now they are
9 up to ten. Tribe C, they are kind of ramping down.
10 They started out with 20, ten, six. So this example we
11 are using a three-year average. So what we do is we add
12 up all of them, all of these, and divide by three, and
13 we get a regional average of 48. So here we have 55,
14 42, 47. So that three-year average is 48. Tribe A, we
15 average theirs; 32.
16 MR. LESANSEE: And the averages are along this
17 route.
18 MR. FRAZIER: Yeah. So their three-year average
19 is about 32. We take 32 divided by 48 and it's about
20 two-thirds, 66.67%. You take that 66.67% and multiply
21 it by the available regional budget. Remember that is
22 $100,000 minus 20%; 80,000 times 66.67% is $53,000.
23 That would be their tribal share on this strictly
24 workload-based formula. Same thing with Tribe B, their
25 three-year average is four, which is only about 8% of

1 the regional workload. Take that 8% number and multiply
2 it times 80,000 and their tribal share is about $6,600.
3 Everybody understand the math on that or do you want me
4 to go over it again?
5 DENISE MESTETH: How many appraisals did we do
6 last year? Is that something that will be up there that
7 if Tribe A had 35 appraisals requested for State Land
8 Exchanges, do you separate those out, land exchanges
9 versus sales versus whatever else?
10 Unidentified PERSON: It's all in the request,
11 yeah.
12 MR. FRAZIER: And that's kind of part of the
13 discussion we talked about is like, what is this number?
14 Now, what we have been using and we've done in our
15 calculations, is product -- appraisal products actually
16 transmitted to the client, which means completed. That
17 wouldn't include all requests. So like if there is some
18 request that's still in the pipeline, they would not
19 necessarily be counted here.
20 MR. LESANSEE: Unless we are trying to use
21 current, we are trying to use current fiscal year
22 numbers. Just because we haven't got to it yet, it
23 still exists. But if we're looking back historically,
24 then it will be completed appraisal service products.
25 DENISE MESTETH: I was just asking her about the

1 request of the appraisal, is it for land exchanges; is
2 it for sale? It doesn't matter, an appraisal is an
3 appraisal.
4 MR. LESANSEE: Yes. It doesn't matter what
5 transaction it is.
6 MR. FRAZIER: We just included this slide to show,
7 give an example of what we mean by the dynamic formula,
8 and just back up to show you this previous slide. This
9 is for year, FY 2005 through 2007, again, a three-year
10 average. Now we go forward one year, and we're using a
11 different three years. Now we're using 2006, 2007,
12 2008.
13 DENISE MESTETH: Is it just for the tribal lands
14 or is it for allotted land, as well?
15 MR. LESANSEE: For this scenario it would be both.
16 This is just a hypothetical.
17 DENISE MESTETH: So if right now in real life, are
18 they separated out?
19 MR. LESANSEE: No. They are counted the same.
20 The only thing that may be excluded is fee land
21 operations. But for fee land evaluations, transactions
22 such as say right-of-way, or congressional mandate,
23 legislation where we have to do evaluation of fee land,
24 that's included, as well.
25 MR. FRAZIER: So again if you go back here and

1 look at Tribe B, when we go back to the previous year,
2 Tribe B goes zero to ten, they're ramping up. Tribe C,
3 20, 10, 6, they're going down. You go to the next year
4 -- again, the next year, Tribe A, they're roughly in the
5 same place. Tribe B, they stayed up and strong and
6 Tribe C they declined and they stay declined, so when
7 you recalculate their tribal shares, Tribe A, they're
8 gonna -- remember they got 53,000 the previous year,
9 they'll stay about the same. But Tribe B now, their
10 tribal share, the previous year they have got 6600, now
11 they're getting 12,000. Tribe C the previous year got
12 20,000 and now they're getting 12,000. So because their
13 demand has decreased, relative to the region, their
14 tribal share is going to be less.
15 This is what Midwest uses is equal division. And
16 actually all these numbers you can basically ignore,
17 because that's workload numbers, and it doesn't matter.
18 All this you can ignore. All you do is, there's three
19 tribes. You take the available regional budget, which
20 is $80,000, you divide by three and that's it. All
21 three, 26,000, one-third.
22 Another way you can do it is, land-based, and the
23 math is actually kind of similar, except the workload
24 base, you're just using land instead of workload as
25 proportionate to the region. So like if Tribe A had

1,000 acres; Tribe B had 500, Tribe C had 100, you add that all up together it's 1600 acres, so what percentage of the whole is this? Tribe A has 62.5% of the land; Tribe B has 31% of the land; Tribe C, you take these percentages again and multiple them by the available regional budget, and here's your tribal share, 60,000, 25,000, 5,000. The math is very simple.

MR. LESANSEE: And the assumption is, if you have more land, like Tribe A, you should all have a direct correlation to the amount of appraisal services that's needed by the Tribe. So the higher the acreage, you should have the greater proportion of the pie to meet the fee appraisal needs.

MR. FRAZIER: We've found that that's not always the case. There's not always a strong correlation between the size of your land-based and the amount of your appraisal needs.

MR. LESANSEE: And population based pretty much the same thing except you're dealing with tribally-enrolled members. Same thing, you add up all the tribal members for the region, and you have 65, 65, 6500 to each of the tribal-enrolled members, and you get your percentages over here, and then you apply that to the residual, or the available funding available to the tribes, and you get your dollar amounts. And these are

your representative fractions. Again, the idea, like the land-based, the more population you have as far as tribally-enrolled members, that direct relationship with the amount of appraisals needed, because of the amount of leasing activity or some other economic development or something. The fact that the more people you have maybe there might be some direct relationship to the amount of that.

MR. FRAZIER: In this one, Idea 5 is what we call the hybrid formula. What we really mean it's a multi-component formula. You're using -- of the various components we've talked about possibly using, you're using combinations of those and weighting them. And Southwest uses hybrid formula, and I think components they use are workload, population, land, and they also add a fourth one, which is an equal division. So like the hypothetical one here, here we're using three of the available components that we talked about, and giving a weight to each one. So, in this example we said, well, workload is pretty important, we're gonna give it a .5 weight, or 50%. Land, important, but not quite as important, so we're gonna give it a .25 or a one-quarter weight. Same with population, we're gonna give it a one-quarter weight. So we basically weighted this thing so that we're gonna consider all three of these

1 components, but we think workload is twice as important
2 as those other two. So we're gonna give it 50%; 25% for
3 population, 25% land, and those add up to 100.
4 And the way the math works out, going back to our
5 previous examples like on land, remember Tribe A had
6 62.5% of the land. You multiple that, times the weight
7 25, .25 is the same thing as 25%, and you get a weighted
8 factor of .156 grade. Same thing with Tribe B, you take
9 zero percentage of the regional land base, multiple it
10 by .25 and you get .781. Tribe C, small land base,
11 multiply it by the weight of .25 .0156. And what you do
12 when you get all of these weighted components is you add
13 them together. And what we do is we take this
14 population, this weight component for land .1563, as to
15 the weighted component .115 for population; add it to
16 the weighted component for workload .3334, and you add
17 this number, this number, this number, and you get a
18 total weight of .6050.
19 You do the same thing for every tribe. And each
20 one gets a weighted component for a total weight. And
21 these three numbers added together will equal one or
22 100%. So then, similar to our other methods, as far as
23 just the math, you take your total weight, which is
24 essentially just a percentage, and you multiple it times
25 the regional budget. Tribe A, multiply that times 87,

1 and that will get a tribal share of $48,000. Tribe B
2 you'll get a tribal share of $15,000. Tribe C about the
3 same amount.
4 Does anybody want me to go over the math again, or
5 is that pretty clear?
6 MR. LESANSEE: What's in the Southwest, what we
7 tried to capture is the differences in the tribes. The
8 small land-base tribes; tribes that may have small land
9 base, but have a large population; tribes that might
10 have a large land base, but small population. And the
11 workloads, we try to measure not only the appraisal work
12 loads, but also the realty workload, and tried factor
13 that in, as well. Because, if you went strictly on the
14 workload base, there might be some tribes that have very
15 little activity in the region; maybe zero, because there
16 hasn't been any work. So in the work-based formula, the
17 problem with that is they may effectively may have no
18 tribal share, because they haven't had any activity.
19 Whereas here in this situation, you have population, you
20 have land. So you're assured of at least some portion
21 of the pot. Plus you have your representative say in
22 the Southwest there's 25 tribes, one over 25 of the
23 share, plus the weighted average for population to land.
24 MR. FRAZIER: By the way, these weights could be
25 changed. I think they are all pretty equally important

so these weights in that case would be .333 .333 .333, and you'd get equal weight. You could do that. You could weight them any way you wanted to as long as they added up to one.

MR. LESANSEE: And the limitations on the formula is trying to get the statistical from the last land population and workload. Primarily -- we have a lot of problems with population and land, because we get our numbers from the land (inaudible), and sometimes that number didn't match up with the tribes. And the same way with this population. BIA statistics would be different than the tribal enrollment office, so there had to be a lot of going back and forth and trying to reconcile this information.

MR. FRAZIER: This is just a slide we included to talk about funding sources, and I don't think we have any compacting tribes in the room. We did for the morning session. But most of the compacting tribes we deal, who have compacted the appraisal function, they get their money, it's base funding from OSG, Office of Self Governance, and that's not money that we can control. It's a separate appropriation, and it has been fixed -- the tribe I'm thinking of is they get essentially $5,000 for the appraisal program every year. They've got '95, and every year they get $5,000, and it

1 doesn't vary. And that is appropriated to BIA, and it
2 goes directly to OSG and into the tribe. It never comes
3 through OST, so we can't increase or decrease it. So
4 it's not something that's within our control.
5 If we go through this process and we came up with
6 a formula and we determined that that tribe actually
7 should be getting $8,000, based on what our calculations
8 -- for example, if we use a work-based formula and we
9 said, "This tribe should be getting $8,000 worth of
10 money," and we look and they, "But they're getting
11 $5,000 from their OSG base," what we would do is, every
12 year we would do a $3,000 supplemental payment and we
13 would transfer that to OSG to raise their total funding
14 to $8,000.
15 Now, if we did a calculation, which would be
16 unlikely the first time, but if we did a calculation and
17 found that they should be getting $4,000, but in fact
18 they are already getting $5,000 from their base, which
19 can't be changed, there's nothing we can do about it,
20 because we don't have the authority to touch the OSG
21 base.
22 DENISE MESTETH: I have one more questions. What
23 were those problems that maybe the tribes had found out
24 or ran into when contracting with the appraisals? What
25 problems did they have?

1 MR. LESANSEE: In contracting, to take on the
2 program? Lot of it, the main thing is insufficient
3 amount of money to carry out the program and unexpected
4 spikes in the amount of work that's required. You have
5 one tribe in Northwest that they mentioned earlier that
6 they anticipate a lot of probate-related appraisals and
7 their tribal shares, they didn't consider the --
8 DENISE MESTETH: So the probate appraisals have to
9 go through that program, as well?
10 MR. LESANSEE: Yes.
11 MR. FRAZIER: In some regions there could be
12 issues, you're available pool of appraisers or
13 geographical regions -- and I think there are some
14 tribes that they do go ahead and they contract or
15 compact out the program, and they have to work out
16 something with fee appraisers to come in. They sort of
17 have to bundle their requests; "Can you come up here and
18 do five?" I think Alaska has a problem with this, I
19 believe. So you could have a problem finding the
20 appraisers to contract with. I don't know how much of
21 that is a problem in the lower 48.
22 MR. LESANSEE: But that's service contracts.
23 We're dealing with the 630 program.
24 MS. MEISNER: Well, one other issues that we have
25 been hearing that in some locations that you have got

1 the Tribe and contract appraisals but the BIA staff
2 doesn't have sufficient funding or resources to get the
3 request through. So while we're hearing that, "We're
4 waiting on an appraisal, we're waiting on an appraisal,"
5 where in reality it hasn't gotten to the appraisal shop
6 yet, because the BIA hasn't been able to process it. So
7 some of the tribes are contracted or compacting are
8 experiencing those, too. And we've had numerous
9 meetings with BIA, training has been involved to get
10 some additional resources to BIA, through BIA. Because
11 we cannot supplement BIA with appraisal funding. That's
12 another issue that has come up.
13 DENISE MESTETH: What happened to the residual
14 monies? Isn't that part of it? Isn't that part of
15 getting that documentation, BIA employees that can get
16 that information? Isn't residual money is that 20%,
17 right?
18 MS. MEISNER: We don't know what BIA has as a
19 residual. There are two separate functions. So the
20 reality staff is making the request to the appraisers to
21 prepare an appraisal. And what's happening is that BIA,
22 they should have sufficient residuals -- we don't know
23 what their residual is, but what we're hearing from the
24 superintendent is that the reality function over there
25 has a whole bunch of things to do and that appraisal

1 request may be number 40 in a stack of 70, so they have
2 to wait until you get to that appraisal. The two
3 different fundings that we're talking about and the two
4 different programs we're talking about.
5 MR. LESANSEE: Two different appropriation
6 authorities, so there is sufficient amount of money on
7 the appraisal side, but the realty side, there isn't to
8 support the request. You can't apply appraisal funding
9 to (inaudible).
10 The other situation we have is the one case
11 where -- across the country probably the same here in
12 the Great Plains, the federal government, as somebody
13 mentioned in the '90s there was a freeze or cut-backs.
14 And I don't know if we've totally recovered from that
15 since that cut-back or freeze. I see a lot of
16 restrictions or various reasons -- we haven't gotten
17 back to the same levels of FTEs on the realty side. And
18 some agencies, they realize their limitations as far as
19 how much work they can actually do with the existing
20 FTEs that they have. And in some cases the
21 superintendents have deliberately held back requesting
22 appraisals, because they didn't want to be inundated
23 with all that and they can't process the transactions,
24 so they probably would request the process. And in a
25 way it makes sense, because if it takes a long time for

1 the transactions to occur, then your appraisals might
2 have to require to go back out and do an appraisal again
3 before a transaction is completed.
4 MS. MEISNER: Another issue too is some of the
5 tribes are finding that they can't find a qualified
6 appraiser. We are even finding that federally, when we
7 try to go out and hire someone, the pool of applicants
8 out there are getting smaller and smaller. We have a
9 program that we hope to have in place by October 1st
10 with trainees, establishing some trainee positions and
11 we hope to have that in place. We are also looking at
12 some of the tribes have tribal employees, and trying to
13 look at if we can mentor in some situations, those
14 employees until they can become certified. So we are
15 looking at different ways to assisting the tribes and
16 establishing their programs and operating sufficiently.
17 MR. LESANSEE: One tribe in Oklahoma, they have
18 the program under a 638 contract, and the cost of
19 outsourcing -- some of the activities say, hunting
20 permits, they generate $500 for the permit. But the
21 valuation, the cost of appraisal runs around $1,000. So
22 it doesn't make sense for them to pay a thousand to make
23 $500. What we are doing there in that case is trying to
24 train these staff tribal appraisers so they can start
25 doing appraisals in-house and hopefully realize costs

that way.

It's a challenge, because the cost of doing business and outsourcing is not only always the best, cheapest way of doing business, and the fastest. Some cases it is, but not always the case.

This leads us to questions, comments and suggestions. And again, we thank you for coming and taking the time to listen to our presentation and to share your thoughts and ideas and so on. And hopefully at the end of all the sessions, we'll have a pretty good idea where we need to go with this tribal shares formula or position. It's just one small program of Indian Affairs, but I think it seems to be an ongoing discussion as far as valuations, as far as the component of the overall trust responsibilities and the business processing that -- depends on the appraisals, to carry out the real estate administration and the appraisals seems to be -- we're realizing that it's a key component, and some of it has to do with the tribal litigation. Valuations usually ends up being a key factor, as far as to support the government's decision on what the value, what actions taken place; what value was used to transfer something or lease something, no matter what the transaction might be.

But contact information, if you have any comments

1 can send your comments to Mr. Frank Perniciaro, and the
2 contact numbers are here, and the phone numbers are
3 here. We desire your comments for this session by
4 Monday, the 27th. This will help us carry your comments
5 forward to the next session, and that will generate more
6 questions and thoughts and so forth about the tribal
7 shares formula. Deadline for any and all comments is
8 Friday the 21st. Our last session is the 18th. If you
9 could submit your comments by the 21st of August and we
10 can compile all that information and go from there. My
11 name is Eldred Lesansee, and Lee Frazier is here, and
12 our phone numbers are here. This is the team here.
13 We appreciate your time coming out to listen to
14 us. Any questions?
15 DENISE MESTETH: Who are the contact people for
16 Standing Rock; do you remember their names?
17 MR. PERNICIARO: Sally Hernandez. Mary Walker.
18 Joseph Smith.
19 MR. LESANSEE: So, what are your thoughts?
20 DENISE MESTETH: You know, the Tribe is
21 contracting this area that OST currently contracts out,
22 I think it's going to be brought up eventually, and if
23 we can address it in advance, and maybe find solutions
24 to problems that we may see in the future that we could
25 do a better job. Such as taking on the part of doing

some tribal employees for appraisal apprenticeship.

MS. MEISNER: Trainees.

DENISE MESTETH: So I would like to do that, because I have some tribal members that are young and educated and able minded and able bodied to go and get this training. It will only add to their skill already, and they'll become valuable employees, even more valuable than they are right now. So I'd like to look into this and also surveying classes, I have another staff member that's interested in surveying and looking into developing surveying classes for tribal members that are interested in mentorship programs.

MR. LESANSEE: Have you talked to your local BLM people?

DENISE MESTETH: No. That's Gary out of Aberdeen. Thank you for having us.

MR. LESANSEE: That concludes our presentation.

(Adornment.)

STATE OF SOUTH DAKOTA )
) SS. CERTIFICATE
COUNTY OF PENNINGTON )

I, JEAN M. CARLSON, Certified Court Reporter, in and for the State of South Dakota, do hereby certify that the foregoing 41 pages, is a true and correct transcript of my stenotype notes, as taken by me in machine shorthand and thereafter transcribed.

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

JEAN M. CARLSON
Court Reporter