

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAMAH NAVAJO CHAPTER, et al. v. DIRK KEMPTHORNE, et al.
No. CIV 90-0957 LH/KBM

Exhibit 1

**In Support of
PLAINTIFFS' MEMORANDUM IN SUPPORT OF THE PARTIES'
THIRD PARTIAL SETTLEMENT
AND
COUNSEL'S MEMORANDUM IN SUPPORT OF THEIR
APPLICATION FOR AWARD OF ATTORNEYS' FEES AND
COSTS**

**U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
BUDGET JUSTIFICATION:
FISCAL YEARS 2007 AND 2009
(EXCERPTS)**

**DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

**Budget Justifications
Fiscal Year 2007**

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FY 2007 Bureau of Indian Affairs Budget
(Dollars in Thousands)

ACTIVITIES Subactivities Program Elements	TOTAL		FY 2007 PRESIDENTS BUDGET REQUEST	FY 2007 Request [OIP]	
	FY 2005 ENACTED	FY 2006 ENACTED		TPA	OTHER CENTRAL REGIONAL PROGRAMS/ PROJECTS
OPERATION OF INDIAN PROGRAMS					
TRIBAL GOVERNMENT					
Aid to Tribal Government (TPA)	34,394	36,699	-443		36,256
Consolidated Tribal Gov't Program (TPA)	64,629	61,352	2,061		63,413
Self Governance Compacts (TPA)	135,894	138,079	4,682		142,761
Contract Support (TPA)	134,420	132,628	0	19,000	151,628
Indian Self-Determination Fund (TPA)	986	971	0	-971	0
New Tribes (TPA)	1,098	1,402	-1,086		316
Tribal Government Program Oversight	3,343	3,558	-44	3,850	7,364
Central Oversight	2,248	2,254	28	2,050	4,332
Regional Oversight	1,095	1,304	-72	1,800	3,032
Total, Tribal Government	374,764	374,689	5,170	21,879	401,738
HUMAN SERVICES					
Social Services (TPA)	30,988	30,989	813		31,802
Welfare Assistance (TPA)	86,420	85,190	-3	-11,008	74,179
Indian Child Welfare Act (TPA)	10,300	10,909	-52	-690	10,167
Housing Improvement Program (TPA)	19,068	18,830	19		18,849
Human Services Tribal Design (TPA)	611	625	-173		452
Human Services Program Oversight	3,925	3,873	63	0	3,936
Central Oversight	887	898	13		911
Regional Oversight	3,038	2,975	50		3,025
Total, Human Services	151,312	150,416	667	-11,698	139,385
TRUST - NATURAL RESOURCES MANAGEMENT					
Natural Resources (UTB) (TPA)	4,819	4,925	-767		4,158
Irrigation Operations and Maintenance	9,111	13,042	38	-600	12,480
Rights Protection Implementation	22,065	21,262	146	-3,260	18,148
Tribal Management/Development Program	9,367	10,146	35	-5,866	4,315
Unresolved Hunting & Fishing Rights	76	0	0		0
Endangered Species (UTB)	2,157	1,192	22	-984	230
Integrated Resource Info Program (UTB)	1,269	1,250	0		1,250
Agriculture & Range (UTB)	24,221	24,272	338	-1,056	23,554
Agriculture Program (UTB) (TPA)	22,164	22,236	330		22,566
Noxious Weed Eradication (UTB)	2,057	2,036	8	-1,056	988
Forestry (UTB)	42,357	42,137	957	0	43,094
Forestry Program (UTB) (TPA)	23,808	23,706	823		24,529
Forestry Projects (UTB)	18,549	18,431	134		18,565
Water Resources (partial UTB)	11,739	11,502	86	-1,875	9,713
Water Resources Program (UTB) (TPA)	4,065	4,066	70	0	4,136
Water Mgmt., Planning & PreDevelopment	7,674	7,436	16	-1,875	5,577
Fish, Wildlife and Parks (UTB)	6,281	6,525	189	-208	6,506
Wildlife & Parks Program (UTB) (TPA)	4,693	4,738	176		4,914
Fish, Wildlife & Parks Projects (UTB)	1,588	1,787	13	-208	1,592
Minerals and Mining (UTB)	8,162	8,179	1,285	2,000	11,464
Minerals & Mining Program (UTB) (TPA)	2,450	2,548	428		2,976
Minerals & Mining Projects (UTB)	5,712	5,631	7	1,400	7,038
Minerals & Mining Oversight (UTB)			850	600	1,450
Resource Management Program Oversight (UTB)	8,735	8,322	-724	0	7,598
Central Oversight (UTB)	3,416	3,000	-800		2,200
Regional Oversight (UTB)	5,319	5,322	76		5,398
Total, Trust-Natural Resources Management	150,359	152,754	1,605	-11,849	142,510
TRUST - REAL ESTATE SERVICES					
Trust Services (UTB) (TPA)	9,014	11,069	-577		10,492
Navajo-Hopi Settlement Program	1,127	1,139	23		1,162
Probate (UTB) (TPA)	11,438	7,826	367		8,193
Probate Backlog (UTB)		7,882	0	3,000	10,882
Land Title and Records Offices (UTB)	11,896	13,436	399		13,835
Real Estate Services (UTB)	40,983	40,578	535	6,534	47,647
RES Program (UTB) (TPA)	30,241	30,761	488		31,249
RES Projects (UTB)	10,742	9,817	47	6,534	16,398
Land Records Improvement (UTB)	7,986	7,891	8,910	0	16,801
LRI - Central (UTB)	5,957	5,882	8,895		14,777
LRI - Regional (UTB)	2,029	2,009	15		2,024
Environmental Quality (UTB)	11,936	11,988	12	0	12,000
EQ Program (UTB) (TPA)	2,395	2,498	-52		2,446
EQ Projects (UTB)	9,541	9,490	64		9,554
Alaskan Native Programs	1,350	1,391	4	-394	1,001
Alaskan Native Programs (TPA)	995	997	4		1,001
Alaskan Native Programs-Other	355	394	0	-394	0
Rights Protection	16,740	14,274	71	0	14,345
Rights Protection (TPA)	2,032	2,062	37		2,099
Water Rights Negotiations/Litigation	10,331	7,897	34		7,931
Litigation Support/Attny Fees	4,212	4,150	0		4,150
Other Indian Rights Protection	165	165	0		165

FY 2007 Request [OIP]				
TPA	CENTRAL	REGIONAL	OTHER PROGRAMS/ PROJECTS	UTB [Unified Trust Bdg]
36,256				
63,413				
142,761				
151,628				
0				
316				
0	4,332	3,032	0	0
	4,332			
		3,032		
394,374	4,332	3,032	0	0
31,802				
74,179				
10,167				
18,849				
452				
0	911	3,025	0	0
	911			
		3,025		
135,449	911	3,025	0	0
4,158				4,158
			12,480	
			18,148	
			4,315	
			0	
			230	230
			1,250	1,250
22,566	0	0	988	23,554
22,566			988	22,566
			988	988
24,529	0	0	18,565	43,094
24,529				24,529
			18,565	18,565
4,136	0	0	5,577	4,136
4,136				4,136
			5,577	
4,914	0	0	1,592	6,506
4,914				4,914
			1,592	1,592
2,976	1,450	0	7,038	11,464
2,976				2,976
			7,038	7,038
	1,450			1,450
0	2,200	5,398	0	7,598
	2,200			2,200
		5,398		5,398
63,279	3,650	5,398	70,183	101,990
10,492				10,492
			1,162	
8,193				8,193
	10,882			10,882
			13,835	13,835
31,249	0	0	16,398	47,647
31,249				31,249
			16,398	16,398
0	14,777	2,024	0	16,801
	14,777			14,777
		2,024		2,024
2,446	0	0	9,554	12,000
2,446				2,446
			9,554	9,554
1,001	0	0	0	0
1,001				1,001
			0	
2,099	0	165	12,081	0
2,099				
			7,931	
			4,150	
			165	

FY 2007 BUDGET REQUEST SUMMARY

Budget Summary: The 2007 budget request for the Bureau is \$2.2 billion in current budget authority, a decrease of \$52.4 million from the 2006 enacted appropriation. The Operation of Indian Programs account is funded at \$1.9 billion, an increase of \$4.4 million. The budget reflects the President's emphasis on fiscal discipline while continuing the Department's commitment to reform trust management. In addition, the FY 2007 request provides increases to strengthen Indian self-determination, enhance education, address law enforcement issues and support development of energy resources in Indian Country. The budget also includes reductions in programs due to lack of performance accountability and duplication of other State and Federal programs.

Budget Request by DOI Mission Component			
<i>(Dollars in Thousands)</i>			
	2006 Enacted	2007 Request	Change from 2006
Serving Communities	2,040,030	1,981,486	-58,544
Management Excellence	234,240	240,364	6,124
Total Current Budget Authority	2,274,270	2,221,851	-52,420

In an effort to improve budget and performance integration, the Bureau, after consultation with Tribes, presents the Operation of Indian Programs account in a restructured format. The revised structure groups budget programs by function rather than organization. The new format facilitates budget analysis as programs can be viewed comprehensively to understand the breadth of each program. In the previous budget structure, funding for the same program could appear in several different locations in the budget. The new structure strengthens performance measurement by grouping program elements that impact the same performance goals.

Management of trust assets for Tribes and individual Indians has been a key component of the Bureau's mission for well over a century. The Bureau is working closely with the OST on the Secretary's ongoing efforts to reform current trust systems policies and procedures. The Bureau's FY 2007 budget continues trust improvements, mainly in the areas of energy and mineral development, probate, and cadastral surveys.

The budget focuses on the resources Tribes need to provide basic reservation programs and develop strong and stable tribal governments, improve education and welfare systems, address critical infrastructure needs, and meet the Secretary's trust responsibilities. The Bureau continues to keep administrative costs low. In FY 2007, administrative costs account for only 12 percent of the requested funds. The request aligns resources to focus on attaining Bureau goals, which are designed to meet the commitment to American Indians and Alaska Natives as outlined in the Department of the Interior Strategic Plan. In developing the FY 2007 request, Bureau leadership worked in consultation with tribal leaders to develop a BIA budget that more accurately reflects the needs and priorities of Tribes.


Strengthening Indian Self-Determination: The Bureau's FY 2007 budget proposes an increase of \$19.0 million to fully fund indirect costs for contracting Tribes. Full funding of contract support costs encourages tribal contracting and promotes progress in achieving Indian self-determination. This increase is partially offset by a \$971,000 reduction in the Indian Self Determination Fund which has sufficient carryover funds to meet estimated needs in FY 2007.

Appropriation Language

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Operation of Indian Programs



For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.), as amended, the Education Amendments of 1978 (25 U.S.C. 2001-2019), and the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), as amended, [~~\$1,991,490,000~~] \$1,966,594,000, to remain available until September 30, [~~2007~~] 2008 except as otherwise provided herein, of which not to exceed [~~\$86,462,000~~] \$74,179,000 shall be for welfare assistance payments: *Provided, That in cases of designated Federal disasters, the Secretary may exceed such cap, from the amounts provided herein, to provide for disaster relief to Indian communities affected by the disaster;* and notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed [~~\$134,609,000~~] \$151,628,000 shall be available for payments to tribes and tribal organizations for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year [~~2006~~] 2007, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet [indirect] contract support costs of ongoing contracts, grants, or compacts, or annual funding agreements and for unmet welfare assistance costs; [and] of which not to exceed [~~\$464,585,000~~] \$457,352,000 for school operations costs of Bureau-funded schools and other education programs shall become available on July 1, [~~2006~~] 2007, and shall remain available until September 30, [~~2007~~] 2008; and of which not to exceed [~~\$61,667,000~~] \$66,277,000 shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program: *Provided further, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, and 25 U.S.C. 2008, not to exceed [~~\$44,718,000~~] \$44,060,000 within and only from such amounts made available for school operations shall be available to tribes and tribal organizations for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year [~~2005~~] 2006 for the operation of Bureau-funded schools and up to \$500,000 within and only from such amounts made available for school operations shall be available for the transitional costs of initial administrative cost grants to tribes and tribal organizations that enter into grants for the operation on or after July 1, [~~2005~~] 2006, of Bureau-operated schools: *Provided further, That any forestry funds allocated to a tribe which remain unobligated as of September 30, [~~2007~~] 2008, may be transferred during fiscal year [~~2008~~] 2009 to an Indian forest land assistance account established for the benefit of such tribe within the tribe's trust fund account: *Provided further, That any such unobligated balances not so transferred shall expire on September 30, [~~2008~~] 2009.* (*Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006.*)**

Justification of Proposed Language Changes (*Continued*)
Bureau of Indian Affairs
Operation of Indian Programs



“...including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed [~~\$134,609,000~~] \$151,628,000 shall be available for payments to tribes and tribal organizations for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year [~~2006~~] 2007, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet ~~indirect~~ contract support costs of ongoing contracts, grants, or compacts, or annual funding agreements...”
(*Department of the Interior and Related Agencies Appropriations Act, 2006.*)

[Recommended deleted language is in ~~strikethrough~~.]

Justification for deletion:

Beginning in FY 2007, the Bureau will be implementing a new contract support cost policy. This policy, which was formulated in consultation with the tribes, will provide tribes with the flexibility to meet either direct or indirect contract support costs. The proposed language change is vital to ensure maximum flexibility to the tribes in the administration of contracted and compacted programs and is consistent with the intent of the Indian Self-Determination and Education Assistance Act, as amended.

**OPERATION OF INDIAN PROGRAMS
SUMMARY OF REQUIREMENTS**

ACTIVITIES Subactivities Program Elements	FY 2005 Actual	FY 2005 FTE	FY 2006 Enacted	FY 2006 FTE	Uncontrol & Related Changes	Program Changes	FY 2007 President's Budget	FY 2007 FTE
OPERATION OF INDIAN PROGRAMS								
TRIBAL GOVERNMENT								
Aid to Tribal Government (TPA)	34,394	89	36,699	89	-443		36,256	89
Consolidated Tribal Gov't Program (TPA)	64,629		61,352		2,061		63,413	
Self Governance Compacts (TPA)	135,894		138,079		4,682		142,761	
Contract Support (TPA)	134,420		132,628		0	19,000	151,628	
Indian Self-Determination Fund (TPA)	986		971		0	-971	0	
New Tribes (TPA)	1,098		1,402		-1,086		316	
Tribal Government Program Oversight	3,343	24	3,558	24	-44	3,850	7,364	46
Total, Tribal Government	374,764	113	374,689	113	5,170	21,879	401,738	135
HUMAN SERVICES								
Social Services (TPA)	30,988	149	30,989	149	813		31,802	149
Welfare Assistance (TPA)	86,420		85,190		-3	-11,008	74,179	
Indian Child Welfare Act (TPA)	10,300		10,909		-52	-690	10,167	
Housing Improvement Program (TPA)	19,068		18,830		19		18,849	
Human Services Tribal Design (TPA)	611		625		-173		452	
Human Services Program Oversight	3,925	30	3,873	30	63	0	3,936	30
Total, Human Services	151,312	179	150,416	179	667	-11,698	139,385	179
TRUST - NATURAL RESOURCES MANAGEMENT								
Natural Resources (UTB) (TPA)	4,819	20	4,925	20	-767		4,158	20
Irrigation Operations and Maintenance	9,111	3	13,042	3	38	-600	12,480	3
Rights Protection Implementation	22,065	1	21,262	1	146	-3,260	18,148	1
Tribal Management/Development Prog.	9,367		10,146		35	-5,866	4,315	
Unresolved Hunting & Fishing Rights	76		0		0	0	0	
Endangered Species (UTB)	2,157	3	1,192	3	22	-984	230	3
Integrated Resource Info Program (UTB)	1,269		1,250		0		1,250	
Agriculture & Range (UTB)	24,221	194	24,272	194	338	-1,056	23,554	194
Forestry (UTB)	42,357	334	42,137	334	957	0	43,094	334
Water Resources (UTB)	11,739	8	11,502	8	86	-1,875	9,713	8
Fish, Wildlife and Parks (UTB)	6,281	5	6,525	5	189	-208	6,506	5
Minerals and Mining (UTB)	8,162	38	8,179	38	1,285	2,000	11,464	48
Resource Management Program Oversight (UTB)	8,735	61	8,322	61	-724	0	7,598	51
Total, Resources Management	150,359	667	152,754	667	1,605	-11,849	142,510	667
TRUST - REAL ESTATE SERVICES								
Trust Services (UTB) (TPA)	9,014	35	11,069	57	-577		10,492	57
Navajo-Hopi Settlement Program	1,127	9	1,139	9	23		1,162	9
Probate (UTB) (TPA)	11,438	134	7,826	134	367		8,193	134
Probate Backlog (UTB)			7,882		0	3,000	10,882	
Land Title and Records Offices (UTB)	11,896	187	13,436	187	399		13,835	187
Real Estate Services (UTB)	40,983	389	40,578	389	535	6,534	47,647	389
Land Records Improvement (UTB)	7,986	10	7,891	10	8,910	0	16,801	10
Environmental Quality (UTB)	11,936	49	11,988	49	12	0	12,000	49
Alaskan Native Programs	1,350	4	1,391	4	4	-394	1,001	4
Rights Protection	16,740	34	14,274	34	71	0	14,345	34
Trust - Real Estate Services Oversight (UTB)	23,073	105	24,368	105	-8,077	0	16,291	105
Total, Trust - Real Estate Services	135,543	956	141,842	978	1,667	9,140	152,649	978
EDUCATION								
Elementary and Secondary (forward funded)	449,721	2301	457,750	2301	3,348	-3,746	457,352	2301
Elementary/Secondary Programs	76,218	264	75,887	264	654	-15,741	60,800	264
Post Secondary Programs	101,267	200	104,010	200	-25	-824	103,161	200
Education Management	10,566	134	8,783	134	6,559	2,500	17,842	169
Total, Education Programs	637,772	2899	646,430	2899	10,536	-17,811	639,155	2934
PUBLIC SAFETY AND JUSTICE								
Law Enforcement	180,063	580	193,377	584	2,263	5,980	201,620	589
Tribal Courts (TPA)	12,378	11	12,291	11	-182		12,109	11
Tribal Courts IIM Initiative (TPA)	5,384		5,330		0	-5,330		
Fire Protection (TPA)	1,222		1,144		0	-1,144		
Total, Public Safety and Justice	199,047	591	212,142	595	2,081	-494	213,729	600
COMMUNITY and ECONOMIC DEVELOPMENT								
Job Placement and Training (TPA)	8,566	8	8,396	8	71		8,467	8
Economic Development (TPA)	4,879	14	4,407	14	-6		4,401	14
Road Maintenance (TPA)	26,967	226	27,386	226	552	-2,602	25,336	226
Community Development	11,554		10,148		0		-10,148	
Community Development Oversight	778	9	1,445	9	19	-493	971	9
Total, Community and Economic Development	52,744	257	51,782	257	636	-13,243	39,175	257
EXECUTIVE DIRECTION and ADMINISTRATIVE SERVICES								
Assistant Secretary Support	16,556	182	8,941	182	576	500	10,017	182
Executive Direction	17,674	178	16,171	178	635	0	16,806	178
Administrative Services	42,329	403	49,603	403	-360	0	49,243	403
Information Resources Technology (UTB)	58,092	110	57,431	110	-4,066	0	53,365	110
Personnel Services	23,176	80	28,936	80	516	0	29,452	80
Facilities Management	20,719	179	23,741	179	-47	0	23,694	179
Intra-Governmental Payments	19,057		19,319		3,280		22,599	
Rentals (GSA/Direct)	26,947		27,993		841	4,243	33,077	
Total, Executive Direction and Administration	224,550	950	232,135	950	1,375	4,743	238,253	950
Estimated FTE Lapse		0		-47				-137
TOTAL OIP	1,926,091	6612	1,962,190	6591	23,737	-19,333	1,966,594	6563



Activity: Tribal Government

PROGRAM DISTRIBUTION:

(Dollars in Thousands)

Subactivity:	FY 2005 Enacted	FY 2006 Enacted	Fixed Costs & Related Changes	Program Change	FY 2007 President's Budget Request	Change from FY 2006
Aid to Tribal Government <i>FTE</i>	34,394 89	36,699 89	-443	0	36,256 89	-443 0
Consolidated Tribal Gov't Program <i>FTE</i>	64,629	61,352	2,061	0	63,413 0	2,061 0
Self Governance Compacts <i>FTE</i>	135,894	138,079	4,682	0	142,761 0	4,682 0
Contract Support <i>FTE</i>	134,420	132,628	0	19,000	151,628 0	19,000 0
Indian Self-Determination Fund <i>FTE</i>	986	971	0	-971	0 0	-971 0
New Tribes <i>FTE</i>	1,098	1,402	-1,086	0	316 0	-1,086 0
Tribal Government Program Oversight <i>FTE</i>	3,343 24	3,558 24	-44	3,850 22	7,364 46	3,806 22
Total Requirements <i>FTE</i>	374,764 113	374,689 113	5,170 0	21,879 22	401,738 135	27,049 22

BUDGET DISTRIBUTION:

(Dollars in Thousands)

Subactivity/Program Element:	FY 2005 Enacted	FY 2006 Enacted	Fixed Costs & Related Changes	Program Change	FY 2007 President's Budget Request	Change from FY 2006
Tribal Priority Allocations:	371,421	371,131	5,214	18,029	394,374	23,243
Aid to Tribal Government	34,394	36,699	-443	0	36,256	-443
Consolidated Tribal Gov't Program	64,629	61,352	2,061	0	63,413	2,061
Self Governance Compacts	135,894	138,079	4,682	0	142,761	4,682
Contract Support	134,420	132,628	0	19,000	151,628	19,000
Indian Self Determination Fund	986	971	0	-971	0	-971
New Tribes	1,098	1,402	-1,086	0	316	-1,086
Central Program Oversight	2,248	2,254	28	2,050	4,332	2,078
Regional Program Oversight	1,095	1,304	-72	1,800	3,032	1,728
Total	374,764	374,689	5,170	21,879	401,738	27,049

Summary of 2007 Program Changes

Request Component	Amount	FTE
Program Changes		
• Contract Support	19,000	0
• Indian Self-Determination Fund	-971	0
• Tribal Government Program Oversight	3,850	22
TOTAL, Program Changes	21,879	22

Justification of 2007 Program Changes:

Contract Support (+\$19,000,000):

The FY 2007 budget request for Contract Support is \$151,628,000, a net program increase of \$19,000,000 from the 2006 enacted level. A major incentive for tribal contracting and compacting is the contract support costs payout rate, which in FY 2006 is expected to be 90% of the negotiated rate. The Bureau is requesting an increase of \$19.0 million to fully fund indirect

contract support costs and to begin a partial payment of direct costs. The change is expected to increase future tribal contracting and compacting, which furthers the goal of Indian self-determination. Fully funding contract support costs will enable tribal governments to better manage their programs, thereby strengthening both the impact of their direct services to individuals, and their ability to comply with the Single Audit Act.

Tribes that exercise *Public Law 93-638* authorities are entitled to contract support costs. These costs reflect administrative or overhead expenses, and are determined through negotiations between a tribal contractor and the National Business Center.

Since 1994 Congress has provided appropriations bill language that caps funding for indirect contract support at the amount specifically appropriated for contract support. This cap was enacted in response to a Court of Appeals case that held contract to be an entitlement because of language in the Indian Self-Determination Act.

Application of the cap has been upheld in post-1994 litigation in the lower courts. A 2005 Supreme Court decision involving the Indian Health Service (Cherokee Nation v. Leavitt) held that ISDA contracts are to be treated as procurement contracts that must specifically limit contract support within the text of the contract to be effective. However, the decision involved an Indian Health Service appropriation not covered by a cap.

Negotiations related to other litigation have resulted in the requirement that BIA pay direct contract support costs in addition to indirect costs. In a joint effort with tribal representatives, the Bureau drafted formal policy for payment of contract support for Tribes contracting under authority of *Public Law 93-638*. The Bureau is working with tribal representatives and the National Business Center to estimate the costs of direct contract support payments based on actual tribal data. However, these negotiations will probably take place over several years as tribes get their documentation in order.

The Bureau will apply a portion of the proposed increase to meet 100% of tribal indirect contract support funding needs. The amount will be dependent on the level of contracting and compacting. Using data available in FY 2005, \$15 million in additional funding would provide funding to pay indirect costs at 100% of the negotiated rate. The Bureau will use the remaining funding to begin paying direct contract support costs.

Indian Self-Determination (ISD) Fund (-\$971,000):

The Bureau is requesting no funding for this program in FY 2007. The proposed decrease is expected have no impact on meeting the start up and contract support fund needs of new and expanded self-determination contracts. Existing carryover funds of \$4.0 million have been determined sufficient to meet the estimated FY 2007 need.

Tribal Government Program Oversight (+\$3,850,000; +22 FTE):

The Bureau's FY 2006 enacted appropriation contains approximately \$5.3 million to fund a tribal court trust initiative that provides resources to tribal governments willing to assume responsibility for the identification and administration of supervised individual Indian money (IIM) accounts. (This amount is separate from Tribes' base funding related to Tribal Courts, which will not be impacted.) Annual appropriations for this initiative date back to FY 2002; however, none of the funding has been used for its intended purpose since FY 2003. This is primarily due to the reluctance of Tribes to assume the additional responsibility for supervised

Amendments (*Public Law 104-156*) and OMB Circular A-133. In addition, most self-governance tribes have included language in their funding agreements indicating that they will work with the Bureau to provide applicable data and information pursuant to the Government Performance and Results Act of 1993.

Tribal participation in self-governance has progressed from seven tribes and total obligations of \$27.1 million in 1991 to an expected 93 agreements including 237 federally recognized tribes and obligations in excess of \$300 million for FY 2006. These funds are negotiated on the same basis as funds provided to tribes contracting under Title I of *Public Law 93-638*, as amended. Self-governance tribes are subject to the same incremental adjustments of base funding as non-compacting tribes. Also included in compacts are funds from other Federal programs allocated or awarded to self-governance tribes such as funds from the Bureau of Land Management, and additional training funds under the Integration of Employment, Training, and Related Services Demonstration Act (*Public Law 102-477*).

Subactivity- Contract Support (FY 2007: \$151,628,000; FTE: 0):


Program Overview: Contract support funds are paid to tribes and tribal organizations currently contracting and/or compacting Bureau programs under the authority of *Public Law 93-638*, as amended. Contract support funds are used by tribal contractors to pay a wide range of administrative and management costs related to the operation of their contracted program. These are administrative and management costs including, but not limited to, finance, personnel, maintenance, insurance, utilities, audits, communications, and vehicle costs.

Contract support funds serve as an incentive for Tribes to contract, and increased tribal contracting supports the Administration's long-standing policy of promoting Indian and Alaska Native self-governance and self-determination. In addition, the provision of contract support funding contributes to each of the Bureau's end outcome goals under the Department's Mission Area of Serving Communities through the wide array of Bureau programs it supports. The FY 2007 request will fully fund indirect contract support costs and begin partial payment of direct costs.

Subactivity- Indian Self-Determination (ISD) Fund (FY 2007: \$0; FTE: 0):

Program Overview: The ISD Fund provides Tribes with resources to pay 100% of their administrative costs in the first year they contract or compact BIA programs, which serves as an incentive for initiating tribal contracting and compacting. Increased tribal contracting supports the Administration's long-standing policy of promoting Indian and Alaska Native self-governance and self-determination. The ISD Fund also serves to stabilize the Contract Support program by ensuring that existing contractors are not adversely impacted when new or expanded contracts are awarded.

In FY 2007 the Bureau is proposing a decrease in funding for the Indian Self-Determination Fund; however, it is not expected to impact meeting the start up and contract support fund needs of new and expanded self-determination contracts. Existing carryover funds have been determined sufficient to meet the estimated FY 2007 need.



With the funding level requested in FY 2007 for contract support, the percentage of Tribes' indirect cost requirements met is expected to rise to 100%, an increase of over 10% from FY 2006. Further, FY 2007 marks the first year that any portion of direct contract support costs will be paid by the Bureau. However, an estimate of that portion will not be available until the Bureau has determined the full direct contract support requirement of the more than 500 tribes and tribal contractors.

The Bureau will implement its formal policy for direct contract support costs funds for Tribes contracting under the authority of *Public Law 93-638*, as amended. In addition, the Bureau will continue to provide training to Bureau field staff and tribal officials and staff on the policy and procedures for the award of direct contract support costs.

In FY 2007 the Bureau is proposing a decrease in funding for the Indian Self-Determination Fund; however, it is not expected to impact meeting the start up and contract support fund needs of new and expanded self-determination contracts. Existing carryover funds have been determined sufficient to meet the estimated FY 2007 need.

The following table represents New Tribes' funding for FY 2005 to FY 2007:

	FY 2005	FY 2006	FY 2007
Shawnee Tribe of Oklahoma*	156,784	154,477	0
Graton Rancheria, California*	156,784	154,477	0
Lower Lake Rancheria, California*	156,784	154,477	0
Shoonaq Tribe of Kodiak, Alaska*	156,784	154,477	0
King Salmon, Alaska*	156,784	154,477	0
Cowlitz Tribe, Washington*	313,618	314,386	0
2 New Tribes	0	315,292	316,000
Total New Tribes Funding	\$1,097,538	\$1,402,064	\$316,000

*Funding was transferred from the New Tribes subactivity to each Tribe's base funding for FY 2007.



2006 Planned Program Performance

During FY 2006, program and oversight efforts will focus on achievement of the new Tribal Government goal to ensure proper management of Federal funds. Progress toward this goal will be measured against the following program performance targets:

- 30 Percent of contractors will submit required audits on time.
- 80 Percent of audits submitted will be met with timely management action.
- 45 Percent of contracts and compacts will contain performance based criteria.

To a large extent, the tribal government oversight staff will be charged with the responsibility to ensure that valid accurate data is collected and reported relevant to the three newly established goal measures for this budget activity. Further, the oversight staff will serve a vital role in turning such data into action, and altering their program management strategies as necessary to keep the Bureau on track in meeting its strategic goals.

Also in FY 2006, the Bureau plans to provide 19 national self-determination training sessions, to be attended by an estimated 1,200 tribal and Bureau employees. This represents an increase of 100 training recipients (approximately 9 percent) over the FY 2005 level.



In FY 2006, the percentage of Tribes' indirect cost requirements met is expected to hold at 90%. Further, the Bureau plans to complete and approve its formal policy regarding the payment of direct contract support to tribes contracting under the authority of *Public Law 93-638*, as amended. Once approved, the Bureau will provide training to field staff and tribal officials on the policy and procedures for the award of direct contract support.

During FY 2006, the Bureau expects to finalize and distribute the 2003 Indian Population and Labor Force Report, and begin data collection for the 2005 Indian Population and Labor Force Report. The Congress has mandated that BIA prepare this report on a bi-annual basis.

Regional and central office oversight staff will draft and circulate proposed regulations regarding the preparation of rolls of Indians, the use or distribution of Indian judgment funds, and tribal trust fund per capita payments by tribal governments.



2005 Program Performance Accomplishments

In FY 2005, the Bureau met approximately 90% of Tribes' indirect cost requirements through the distribution of \$134.4 million in contract support funds to more than 500 Tribes and tribal contractors. In response to ongoing legal proceedings surrounding the issue of contract support, the Bureau undertook a joint effort with tribal representatives to create a formal policy regarding the payment of direct contract support.

During the year, the Bureau provided 19 national self-determination training sessions that were attended by approximately 1,100 tribal and Bureau employees.

Another objective accomplished during FY 2005 was updating the Bureau's tribal leaders database for distribution to Congress, Federal agencies, state governments, tribal governments, libraries, adoption agencies, businesses and the general public. The database is used to mail or fax time-sensitive information to the tribes regarding funding opportunities, available grants, program services and other matters of interest to the tribes. Approximately 100 government and business organizations request updated information on a regular basis. Another 150 – 200 organizations request the data for special one-time projects during the year.

Oversight staff at the agency, regional, and central offices provided more than 42,700 self-determination technical assistance responses to Tribes. The technical assistance included telephone calls, letters in response to tribal letters, formal scheduled meeting with tribes, and assistance to tribal leaders and tribal representatives when they visit Bureau offices.