



2013 Winter Convention Ground Mound, WA

RESOLUTION #13 - 02

"RECOMMENDATION FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS AND HOUSE RESOURCES SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS TO CONDUCT OVERSIGHT HEARINGS ON IHS AND BIA CONTRACT SUPPORT COST ISSUES"

PREAMBLE

We the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, the Indian Self-Determination and Education Assistance Act (ISDEAA) allows Tribal governments to assume operation of federal health programs managed by the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) and to receive contract support

costs (CSC) to cover the reasonable costs of activities which must be carried out by Tribes in order to ensure compliance with the terms of the contract and prudent management of the program, but normally are not carried on by the Federal government's direct operation of the program or are provided by other resources than those under the contract; and

WHEREAS, due to CSC shortfalls, tribally administered IHS and BIA programs end up with less funding and fewer personnel than non-contracted IHS and BIA programs that provide the same services; and

WHEREAS, Tribes have been litigating CSC issues with IHS and BIA for over twenty years; and

WHEREAS, the Supreme Court has ruled that the Federal government is liable for these CSC underpayments; in *Cherokee Nation v. Leavitt* the Supreme Court held the United States liable for IHS's failure to pay full CSCs in 1994-1997; and

WHEREAS, in *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), the Supreme Court reached the same conclusion over the BIA's 1994-2001 CSC underpayments, notwithstanding "caps" on aggregate CSC spending in each year's appropriations act, and the *Ramah* decision was held to apply to IHS in *Arctic Slope v. Sebelius*, No. 2010-1013 (Fed. Cir. Aug. 22, 2012); and

WHEREAS, the *Salazar v. Ramah Navajo Chapter* case affirmed that Tribes carrying out federal programs under the ISDEAA are entitled to full CSC, the reasonable costs of administering those programs and services, just like any other federal contractor, and are entitled to be paid what the statute and its contract promise; and

WHEREAS, while the BIA is involved in productive settlement negotiations, the IHS Director on January 14, 2013, issued a 'Dear Tribal Leader Letter' that proposes a costly settlement framework that would require re-auditing every tribal contractor for every claim year, an approach that threatens to turn the claims resolution process into an expensive and drawn-out legal fight that will waste valuable resources better spent providing health care services; and

WHEREAS, the IHS proposal ignores the fact that there is reliable data on past years' CSC shortfalls in the agency's annual CSC shortfall reports to Congress, required under the ISDEAA and the IHS Manual and certified by IHS as accurate; and

WHEREAS, the CSC shortfall data should be used as the starting point for fair and efficient settlements; and

WHEREAS, the IHS has refused to make available CSC distribution data for recent years, data which is necessary to ensure the transparency and accountability of the agency's use of appropriated federal funds; and

WHEREAS, without access to such CSC data, Tribes are unable to determine if the agency is spending its CSC budget lawfully, and whether IHS is submitting accurate data to Congress; and

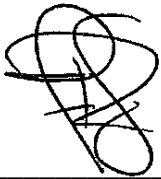
WHEREAS, the need for transparency was underscored in 2011 when IHS made a major error in the estimate it provided to Congress, misleading Congress into reducing an appropriation which would have been sufficient to fully pay all of the contracts IHS had with the Tribes; now

THEREFORE BE IT RESOLVED, that ATNI hereby requests the Senate Committee on Indian Affairs and the House Resources Subcommittee on Indian and Alaska Native Affairs convene oversight hearings on contract support cost issues with the IHS and BIA as early as possible in the 113th Congress; and

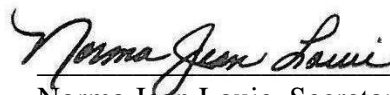
BE IT FURTHER RESOLVED, that ATNI recommends that the CSC oversight hearings focus on: (1) addressing future ISDEAA contract support cost funding for BIA and IHS in light of the recent *Ramah* decision, including the possible removal of the CSC spending "caps"; (2) the IHS's proposed approach to settling past years' CSC shortfalls; (3) IHS resistance to using CSC shortfall data to settle past years' claims; (4) IHS's refusal to share CSC data required under the ISDEAA and IHS Contract Support Cost Policy, and; (5) removing the CSC cap language in the annual appropriations bills and requiring the agencies to request full CSC funding.

CERTIFICATION

The foregoing resolution was adopted at the 2013 Winter Convention of the Affiliated Tribes of Northwest Indians, held at Great Wolf Lodge, Grand Mound, Washington, on January 28 – 31, 2013 with a quorum present.



Fawn Sharp, President



Norma Jean Louie, Secretary