

**Written and Oral Testimony of Nancy R. Martine-Alonzo Secretary/Treasurer
Ramah Navajo Chapter-Ramah Band of Navajos
Submitted to the US Congress:
HOUSE APPROPRIATIONS SUBCOMMITTEE ON INTERIOR, ENVIRONMENTAL
AND RELATED AGENCIES FY 2015 FEDERAL BUDGET REQUEST, SUPPORT AND
CONCERNS FOR: DEPARTMENT OF INTERIOR (DOI)--BUREAU OF INDIAN
AFFAIRS (BIA)**

April 7, 2014

HONORABLE CHAIRMAN AND COMMITTEE MEMBERS:

I am Nancy Martine-Alonzo, Secretary-Treasurer of the Ramah Navajo Chapter and former President of our Ramah Navajo School Board. Thank you for the opportunity to submit our written testimony for consideration under the DOI-BIA FY 2015 Budget. Our testimony focuses on the **(1) Contract Support Cost Issues and Concerns (2) Retention of the BIA-Ramah Navajo Agency at the Local Level, (3) The Annual Budget Formulation and Appropriation vs. Actual Funds, (4) Operation And Maintenance Funds** I want to use this precious time to address the nationwide problem of contract support costs and how it affects our community.

1) CONTRACT SUPPORT COST ISSUES AND CONCERNS

From its inception in the 1970s through its two major amendments in 1988 and 1994, the Indian Self-Determination Act has acted on the premise that the decision to contract should rest on the opportunity to operate contracted programs at the same level the Secretaries would conduct them. In 1975 shortly after passage of P.L. 93-638, the Bureau of Indian Affairs, understanding this essential principle, created a budget category called "contract support costs" as the mechanism for maintaining this parity of opportunity, that category now carried into the Act by later amendment. Instead over the years, failure to pay adequate contract support costs has resulted in less delivery of governmental services to Indian people whose Tribes have elected to contract and generated continuing legal disputes over that failure.

AN IMMEDIATE PROBLEM. Our First Request Is For Congress To Compel The BIA To Pay Us All Appropriated Funds To Us Immediately.

To give you an idea of how desperate the situation has become, our Chapter has yet to be paid *any* direct contract support costs for FY 2012 or FY 2013. We are still owed *most* of our direct contract support costs, some \$657,699.00, for those years. And we have received only a portion of our indirect contract support costs for those years. Congress has long since appropriated the necessary funds, but the BIA tells us bureaucratic snafus and the lack of qualified personnel at the Regional Office is holding up our payment these many months and years.

We are a small, poor community with few material resources. We do not have gambling profits or oil wells. The Government needs to do the honorable thing and direct the Regional Office to pay us from existing funds, which they acknowledge they have, yet cannot transfer the funds to us.

SETTLEMENT OF THE RAMAH CLASS ACTION SUIT. Our Second Request Is That This Committee And Congress Urge The Administration And The Department Of Justice—Perhaps Through A Congressional Resolution—To Speed The Settlement Of Our Class Action To End No Later Than December 31, 2014.

Around Indian country Ramah is a household name. In 1970, five years before the Indian Self-Determination Act was passed, we started our own Indian-owned and run school from scratch, the first time an Indian tribe did this since the 1800s. Of course we had outside help, but without the drive, intelligence, and persistence of our leaders we would never have succeeded.

We are the only Indian community to have taken two Indian self-determination cases to the Supreme Court and we won both. But this is significant only because of the contrasting results in the two cases.

In 1982 the State of New Mexico, after losing in the Supreme Court, promptly returned our tax payment in full plus interest within two months. This time, one and half years after the 2012 victory, an estimated 600+ tribes and tribal organizations who make up the class have still not received a dime. Our lawsuit is now 24 years old.

In 1990 we launched our epic lawsuit over contract support costs. After winning the first round in the Tenth Circuit in 1997, followed by settlement, we were joined by the Oglala Sioux Tribe and, our neighbor, the Pueblo of Zuni, and pursued additional claims. In June 2012 we won an historic victory for all Indian country in the Supreme Court in *Salazar v. Ramah Navajo Chapter*.

In 1994 we challenged the caps on contract support costs. It is now 20 years since then and, despite our victory in the Supreme Court, we are still locked in a seemingly endless negotiation. Despite the existence of Government statistics submitted to Congress from which class-wide damages can easily be approximated, the Government has conditioned settlement on an enormously complex and time-consuming statistical sampling exercise. Each sampled tribe-year is to be subjected to a forensic audit. For Enron and Bernie Madoff, who broke all kinds of laws, this analysis is appropriate. Tribes, the victims of the Government's contractual breaches and treated as if they broke laws, are unfairly burdened and punished for no rational reason.

CONTRACT SUPPORT COSTS IN THE FUTURE. Our Third Request Is That Congress Compels The Departments Of The Interior And Of Health And Human Services To Conduct An Accounting Of The True Costs Of Operating All Indian Services Functions. This Accounting Should Determine The Amounts Necessary For Federal Functions That Cannot Be Contracted Out, And All Federal Savings—Not Just To The Two Departments But For All Federal Agencies—From Contracting Out Programs Under The Indian Self-Determination Act. The Resulting Information Will Aid The Agencies And Congress In Formulating Future Indian Affairs Appropriations So As To Ensure Full Payment Of Contract Support Costs.

The central premise of the Indian Self-Determination Act rests on the notion that individual tribes will receive the same quantity and quality of services, whether they choose to contract or elect to continue receiving those services from the federal agency. This is called the Parity Principle.

Parity remains fundamental to self-determination, as Congress recognized in Public Law 100-472 when it elevated contract support costs from an administrative budget category to a required component of the contract price, saying:

The federal service bureaucracy that was supposed to be reduced as tribes assumed control of programs has been replaced by a contract monitoring bureaucracy. . . . The term “contract (support) costs” is intended to insure that the Federal government provides an amount to a tribal contractor that will enable the contractor to provide at least the same amount of services as the Secretary would have otherwise provided.

However, the expected reduction of the Federal Indian infrastructure has not occurred. Instead the bureaucracies have managed to place the entire burden of shortfalls in contract support costs on the backs of contractors such as us. Contract support costs are “too expensive,” say the bureaucracies, but their argument rests on hiding the savings to the Government from contracting. For example, when services are contracted out, the Office of Personnel Management needs to provide fewer personnel services, the General Services Administration fewer property management services, and the Department of Justice fewer legal services. Additionally there should be sizeable in-house savings.

Failure to measure these savings and considering them in the annual appropriations process skews the economic analysis and enables the Federal infrastructures to siphon monies away from the tribes. Contractors end up diverting program dollars to pay overhead, exactly what Congress wanted to avoid. In effect, tribal contractors subsidize the “indirect costs” of the Secretarial-run programs. The principle of parity between contracting and non-contracting tribes has been lost. As a result contracting becomes less attractive to tribes and federal bureaucrats retain their jobs.

2) RETENTION OF THE BIA-RAMAH NAVAJO AGENCY AT THE LOCAL LEVEL

KEEP OUR AGENCY. Our Fourth Request; Congress To Require BIA To Keep Ramah Navajo BIA Agency; We received word this week that the Ramah Navajo BIA Agency will stay open through FY’15. We are very grateful for the intervention made by a member our Congressional Delegation. The BIA had intends to eliminate the Agency in 2015. We seek the help of Congress to insure that the Ramah Navajo BIA Agency remains open to provide it’s trust responsibility to the Ramah Band of Navajos. The Ramah Navajo BIA Agency is the only Navajo Agency in the BIA’s Southwest Region. We fought hard to persuade the BIA to establish the agency in 1972, ending years of BIA indifference and neglect.

The BIA Ramah Navajo Agency maintains over site and signatory authority for over 20 P. L. 93-638 contracts in this community, more than any other BIA Agency in the Southwest Region.

If the agency is eliminated, the Ramah Navajos will be served from the Zuni Pueblo agency some 40 miles away, under another tribal jurisdiction, across county a line that relegates us as second class citizens and priority. Tribal culture and language are vastly different. Delivery of services to our community will be delayed. Our trust services employees will no longer have access to the secured government computers in the adjacent agency offices.

We have already experienced significant problems, due to the uncertainty of keeping our Agency open. The BIA decided to transfer the Road Maintenance and Fire Management programs to the Zuni Agency, which caused substantial delays in the provision of services. However, with the

notice that the BIA will keep our Agency open, those two programs will be moved back to the Ramah Navajo Agency.

We recognize and applaud the BIA's desire to streamline its bureaucracy. But here, our remote community, culturally distinct from its neighbors, should continue to be served by its own agency.

3) **THE ANNUAL BUDGET FORMULATION AND APPROPRIATION VS ACTUAL FUNDS**

BUDGET TRANSPARENCY. Our fifth Request is to Urge Congress To Lift This Veil And Require More Transparency In The Formulation Of The BIA's Budget Requests.

Each year the BIA calls together the tribes in our region to discuss the formulation of the agency's budget request to Congress. Each year we come to those meetings and provide each year our views and comments. Then . . . Nothing. We have no idea how the BIA decides to allocate funds among tribes and among programs. We do not know its rationale for its decisions. We hear nothing further about the agency's budget request until the President submits it to Congress. Then we find that other similarly-situated tribes are funded for a particular program while we have not been deemed worthy, for reasons unknown to us.

4) **OPERATION AND MAINTENANCE FUNDS**

Our Sixth Request; BIA-OJS Funding for the Operation and Maintenance of the Detention Facility. \$1,815,610.00

Add sixteen (16) new corrections officers to staff the new Correctional Facility that will be opening in fall of 2015. This will include one full time Corrections Director (1FTE) The new facility will require a staff of 25.5 full time certified staff in order to operate the facility per the BIA Mandates. The Corrections Department is currently advertizing, recruiting, hiring and training new correctional staff without a funding source. FY-2015 funding to increase detention staff and Start Up Costs based on projected needs of Ramah Navajo Chapter's operation and maintenance of a new Detentions Facility. That it be made part of the recurring funds under the Ramah Navajo Chapter's Correction Department annual funding agreement (AFA) with the Bureau of Indian Affairs.

Thank you,

Nancy R. Martine-Alonzo

Nancy R. Martine-Alonzo, Secretary/Treasurer
Ramah Navajo Chapter