

**THE STATUS OF BACKLOGS AT THE DEPARTMENT
OF THE INTERIOR**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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MAY 22, 2008
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THE STATUS OF BACKLOGS AT THE DEPARTMENT OF THE INTERIOR

THURSDAY, MAY 22, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:31 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order this morning. This is a hearing of the Committee on Indian Affairs in the United States Senate. It is an oversight hearing to follow up on the status of the backlogs at the Department of the Interior.

Last October, the Committee held a hearing to examine the backlogs in five areas at the BIA: land into trust applications; environmental impact statements; probate; appraisals; and lease approvals.

As we heard from witnesses last fall, these are issues that greatly impact the ability of tribes to develop their land and develop their communities. Delays in the processes at the BIA impede the ability of tribes to provide housing, economic development, and essential Government services to their members.

These delays can also impact the larger communities on Indian reservations. What the Committee has learned is that there are significant delays in most of these areas. There were 1,211 land into trust applications pending at the Department. Some were filed over 20 years ago. Every region of the BIA had a backlog in appraisals, with the largest backlog being in Alaska.

At the hearing, the Department could not provide us with any specific numbers on pending appraisals, environmental impact statements, or commercial leases. The Committee also learned at the hearing last fall that there were no tracking systems and no consistent standards being implemented for most of these matters.

Indian probates were the only matter where the Department, the BIA, had a comprehensive tracking system to monitor the performance of each case. However, this apparently was because the Department hired outside contractors to handle Indian probates.

The state of affairs at the Department last October was, in my view, not at all acceptable to any of us. Assistant Secretary Carl Artman described it best when he said it was "creating havoc for

the tribes.” Though it does create havoc, more than that it affects the lives of thousands and thousands of American Indians.

Let me provide an example of how the Department’s delays are impacting the Indian community. I showed this example last fall, but I think it illustrates my point. Last September, the Department published its decision to take lands into trust for the Shakopee Indian community in Minnesota. The Tribe had waited 11 years for that decision.

I have two photographs that will show the impact of that delay. Photograph one shows what the tribal and surrounding land looked like in 1997—that is the year the tribe submitted its application to the Interior Department. The red outline describes the land the Shakopee Tribe was attempting to take into trust.

The second chart will show you how the tribal and surrounding land looked in 2005. You can see that the surrounding land has been substantially and intensively developed. A lot of development has occurred on the non-Indian land, but almost no development has occurred on Indian land because the Department had not made a decision on the tribe’s application. Again, look at that. That tribe wanted the opportunity to develop its land; it submits a request, an application, and it sits 11 years without a decision.

Meanwhile, others are developing all around that land, and this tribe is, in my judgment, cheated of an opportunity to develop its land. The Shakopee Tribe is a fairly wealthy tribe, but you can see the Department’s failure prohibits even that tribe from developing its surrounding communities.

Last fall, I made two points: The Department needed to become more transparent with its processes so we could understand what it is doing and it needed to expedite its decision-making. We are not trying to force the BIA to make specific decisions. That is, we are not describing to them what kind of decisions they should make, but we are insisting that they expedite decision-making.

I know that Assistant Secretary Carl Artman took my words to heart, and the words of my colleagues on this Committee. My staff has been following this matter since last fall and I believe some progress has been made. But it is clear there remain many obstacles that we will talk about today.

As many of you know, Assistant Secretary Artman is now going to be leaving his post, effective tomorrow. I am terribly disappointed by that. I have expressed that disappointment directly to Mr. Artman and also to the Secretary of the Interior. Mr. Artman was the third Assistant Secretary for Indian Affairs under this Administration and the third to resign. For two years during this Administration, there was no Assistant Secretary. Now, I wonder how long it will take to get another Assistant Secretary.

I think this is undermining the interests of Indian tribes across this Country, and I am very upset about it. I don’t understand it at all. This Committee, as its first action, took a lot of time to make sure Mr. Artman, was confirmed because that position had been vacant for two years. It ultimately required a roll call vote on the Senate Floor, but we finally got it done.

In light of Mr. Artman’s imminent departure, it seemed appropriate to invite the witnesses from last fall’s hearings to come back and provide this Committee with a status report on what is hap-

pening with the backlog. I know that two of the previous witnesses were not able to be with us today: Ron His Horse Is Thunder, who is Chairman of the Standing Rock Sioux Tribe; and Governor William Rhodes from the Gila River Indian Community in Arizona. Governor Rhodes has submitted written testimony that describes what has happened on his reservation since last fall.

I want to mention one additional point. On Sunday late afternoon about 4:30 or 5 o'clock, I was in a van driving north of Dickinson, North Dakota, about 50 miles north of Dickinson to an oil rig in the Bakken Shale.

In the Bakken Shale formation, which the USGS has said there is now estimated to be 3.6 billion to 4.3 billion barrels of recoverable oil, the largest assessment they have done anywhere in the United States in the lower 48. So there is and there is going to be a lot of oil activity in that region of western North Dakota and eastern Montana.

About 4:30 or 5 o'clock last Sunday afternoon, I was driving 50 miles north of Dickinson with someone who is an expert in these areas, taking me to see the Bakken Shale rig. These rigs go down 10,000 feet, make a big curve, and drill out 10,000 feet. It is very sophisticated drilling. Ten thousand feet below, they are trying to find a 100 foot seam of shale, and they want to divide that seam into thirds, and they want to be drilling in the middle third of a 100 foot seam 10,000 feet down, and 10,000 feet out.

This person said to me there is something unusual going on, however. He said in the central area of North Dakota, where there is unbelievable development, we have close to 80 oil rigs right now and it is very aggressive, and there are many more rigs promised in the weeks ahead. There is almost no drilling on the Indian reservation, which is right smack dab in the middle of it all!

There is drilling all around the reservation, wells with 1,800 barrels a day, 1,000 barrels a day, but on the Indian reservation there is virtually no activity, almost none. It is unbelievable. They, too, are being cheated once again. I asked him why. Well, because you have to go through 100 hoops, he answered. It starts at the BIA and then goes to BLM. The fact is, these approvals are not forthcoming.

So, in an area that is prime development for these oil wells, which are popping up in every direction around that Indian reservation, this community is not able to enjoy the benefits. It is not because the folks on that reservation don't want it to happen, I guarantee you.

But again Sunday night, as I was taking a look at all that, it just makes me furious. Once again, the bureaucracy intervenes to decide others can enjoy this opportunity, can participate in it, can benefit from it, but American Indians don't quite have that same opportunity.

That is why we held a hearing last fall, and it is why we are holding another hearing now to find out what on earth has happened since then. Can we finally rely on a BIA that starts to get a few things done, instead of having to wait a dozen years or more to even review and then give approval to some of these requests?

We have votes starting at 11:30. We only have four witnesses. My hope is we will finish this in an hour and a half. I appreciate

our Vice Chairman, Senator Murkowski is here, and Senator Barrasso.

Senator Murkowski, would you like to make an opening statement?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman.

I appreciate the opportunity for a follow on. It seems that so often around here we will have Committee meetings where we have an opportunity to ask the tough questions. Sometimes we get full and complete answers. Other times, we are told we will get back with you. Oftentimes when it is something where we are trying to find out what is the problem of the delays, what can we be doing better, and we get some good suggestions that come out of the Committee. But more times than not, we don't come back to you in a Committee setting and say, so, how are you doing, and how are we doing, and together how are we making things better for the process.

So I appreciate the Chairman's initiative in calling you back, and I appreciate your return appearance. We know that while the Department continues to have problems with the backlogs in the areas of the fee to trusts and the leasing approvals and the EISs, I have heard that there has been some good progress. I am looking forward to hearing some of the specifics on that this morning.

Mr. Secretary, last time you were here, you assured us that the current probate backlog would be eliminated by Fiscal Year 2009. I would like to know whether you believe that estimate still holds true.

The Chairman has mentioned some of the delays that have been caused, that play out, if you will, in the use or development of Indian lands for minerals and energy. Again, this is an area where we have just not seen a level of satisfaction. So if there are any updates or any good news that you can share, or any ideas as to how we can make the system better, we would certainly welcome that.

Mr. Artman, I want to take just a moment to thank you for your tenure as Assistant Secretary for Indian Affairs. We know that the backlogs that we have been looking at, they are not your fault. They were certainly there prior to your time. I think I was one of many that was very hopeful that you might just be the one that would make many of these problems disappear.

I am sure that you have had a positive impact on some of these troubling issues and I appreciate your efforts. I am disappointed that you are leaving, but we understand what goes on out there. So I just wanted to have an opportunity this morning to thank you for your willingness to serve.

With that, Mr. Chairman, I look forward to the comments.

The CHAIRMAN. Senator Murkowski, thank you very much.
Senator Barrasso?

**STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman.

While I don't have those wonderful pictures that you showed, they very clearly demonstrate the delays and the problems that it has caused. I have the exact same experience when I talk to my friends. These issues are of great importance to the folks of the Eastern Shoshone and the Northern Arapaho Tribes in Wyoming. In case after case, whether it is fee to trust; whether it is NEPA analysis; whether it is probate, where the delays are paralyzing the realty system; whether it is the leases, and when you look at that, it seems outdated and inefficient; whether it comes down to appraisals that are inefficient and slow. And there is just a list of problems that we are having in Wyoming.

It really does seem that the government's role in this process is filled with red tape, with administrative barriers. I know there is a lot of hard work going on at the local level at the Wind River Reservation. I see those efforts being lost because of a massive bureaucratic system.

So it is very important that the Bureau's administrative process be reformed to remove barriers to the development that all of us need with our tribes. So I look forward to discussing the opportunities for these reforms with you today.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso, thank you very much.

We will have four witnesses. We will begin with Assistant Secretary Carl Artman; we will conclude with the other three witnesses. I think, with the permission of the other Members, we will have all four witnesses testify first. Mr. Artman, are you able to stay?

Mr. ARTMAN. Yes, of course.

The CHAIRMAN. All right. Let me thank you for being here, and we thank you for your work. Let me express again my disappointment that you are leaving, but I do appreciate the work that you have done. I hope your report is a good one.

Mr. ARTMAN. Thank you.

**STATEMENT OF HON. CARL J. ARTMAN, ASSISTANT
SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF
THE INTERIOR**

Mr. ARTMAN. Good morning, Mr. Chairman, Madam Vice Chairwoman, Senator. It is a pleasure to be back here today as a follow-up to this Committee's oversight hearing last October on land into trust applications, environmental impact statements, probates, and appraisals.

My statement today will focus on our accomplishments since the last hearing. I would like to submit the full statement for the record, with your permission.

With regards to probate cases, I am pleased to report that we are still on track to eliminate the probate backlog. Our office is currently tracking the probate cases with our ProTrac system, which currently tracks 58,600 cases of which 16,336 are moving through the probate process, and 42,264 have either been distributed or

closed, or have determined to have no trust assets requiring a Federal probate process.

In October, we stated that 98 percent of our backlog cases were ready for adjudication and distribution of assets. As of April 30, 2008, 99 percent of our backlog cases have completed the case preparation phase and are ready for adjudication and distribution of assets. Eighty-eight percent of the backlog cases have been closed.

These numbers demonstrate that the BIA is still on track to clear the probate backlog by the end of 2008, and by 2009 the BIA staff should be able to handle the probate cases without any further help from outside contractors.

With regards to the acquisition of land into trust for non-gaming purposes, significant progress has occurred in the land into trust requests. We have implemented a fee to trust tracking system. We prioritized applications and completed 62 percent of our identified priority applications, and we are on track for completing the remaining priority applications. Further, as of April 28, 2008, we received 1,489 total requests. Of those requests, 215 applications were prioritized last fall in October, 2007 because the 215 applications were determined to have sufficient information for us to actually proceed with the regulatory procedures of bringing that land into trust.

Of the 1,489 requests received to date, 89 have been completed, 266 have been determined, and the only difference between those two is title work, and 90 of them have been withdrawn. Six hundred and thirteen pending requests lack sufficient information for us to proceed with the application. Of the remaining 363 land into trust applications, 178 applications are waiting on local government comments or tribal responses to those questions; 45 are undergoing a NEPA analysis; and 35 are being surveyed for hazardous material impacts. One hundred and five are being reviewed to determine if there are any title-related issues that must be resolved before a land into trust determination can be made.

It is important to highlight that this detailed breakout does not include the 68 gaming and gaming-related applications in the April 28th inventory. The proportion of applications in the NEPA compliance stage has decreased by 50 percent, while the proportion of applications in the hazmat survey has decreased by 73 percent. As of April 28th of this year, determinations have been made for 128, or 62 percent, of these applications. We have also made determinations on an additional 277 applications. The 128 applications that I referred to, that is 128 of the 215 prioritized applications.

While in previous years approved transfers of land into trust were nominal, I am proud to say that under my tenure in office we have been able to take approximately 53,027 acres of land into trust. In addition, we released the fee to trust handbook earlier this week which will promote consistent processes and best practices in each region.

The BIA currently has no off-reservation files pending at the central office for review. This is a reduction of 42 applications that we had in October, 2007. All of the applications have been returned to the regional office with recommendations, and the final actions will take place or have taken place at that level.

Moving on to EISs, at this time there are currently no DEIS draft environmental impact statements ready for publication. The BIA is current on its processing of all EISs and in its publication of them for the Federal Register. This backlog has been eliminated.

With regards to appraisals, currently the OST has 2,564 appraisals pending. Of this number, approximately 1,300 can be disposed of rather quickly. The Department is reviewing our appraisal process and the method of recording the appraisal backlog. Through the use of mass appraisal technology and consistency of the method of reporting the backlog, we believe that this number can be reduced significantly in the near future and we have been working closely with OST to do so.

With regards to lease approvals, currently we have 93 commercial leases pending approval. That is down from 300 in October of 2007. In our 12 regions, we have three regions with no backlog at all: the Southern Plains Region, the Eastern Region, and the Eastern Oklahoma Region. The remaining regions have leases that have been pending for over 30 days.

This concludes my testimony, and I will be happy to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Artman follows:]

PREPARED STATEMENT OF HON. CARL J. ARTMAN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman, Madam Vice Chairwoman, and members of the Committee. It is a pleasure to be back here today as a follow up to this Committee's October 4, 2007 oversight hearing on land into trust applications, environmental impact statements (EIS), probates, and appraisals. Since my previous testimony included an overview of each item and the procedures that we follow as set forth in statute and regulation, my statement will focus on our accomplishments since the last hearing.

Probate

We are still on track to eliminate the probate backlog.¹ As we mentioned in our October 4, 2007, testimony, there are four phases for the completion of a probate case. Using the ProTrac system, BIA monitors the performance of each case at each phase all the way through distribution of assets to the heirs. These phases are: (1) Pre-Case Preparation; (2) Case Preparation; (3) Adjudication; and (4) the Closing Process. The ProTrac system contains 58,600 cases of which 16,336 are currently moving through the probate process as of April 30, 2008 and 42,264 have either been distributed and closed or determined to have no trust assets requiring a Federal probate.

In October, 98 percent of our backlogged cases were ready for adjudication and distribution of assets. As of April 30, 2008, 99 percent of the backlog cases have completed the case preparation phase and are ready for adjudication and distribution of assets. Eighty-eight percent of the backlog cases have been closed.

These numbers demonstrate that the BIA is still on track to clear the probate backlog by the end of 2008. By 2009, BIA staff should be able to handle the probate cases without help from outside contractors.

Trust Land Acquisitions for Non-Gaming Purposes

Significant progress has occurred in processing land-into-trust requests. We have implemented a fee to trust tracking system, we prioritized applications, completed 62 percent of identified priority applications, and are on track for completing the remaining priority applications.

As stated in the October 4, 2007 testimony, the basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to an Indian tribe, or by Section 5 of the Indian Reor-

¹The backlog is defined as all estates where the decedent's date of death was prior to 2000 or whose date of death was unknown and the estate was part of the managed inventory as of September 30, 2005.

ganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians “within or without existing reservations”. The Bureau is further guided by the “151” regulations (25 CFR Part 151) that govern land acquisition. The Secretary applies his discretion under these authorities, unless the acquisition is legislatively mandated.

There are two primary types of land acquisitions under this category which are processed for Indian landowners by the Bureau of Indian Affairs (BIA): on-reservation; and off-reservation. The number of current applications fluctuates as we continually receive new requests to bring land into trust and process current applications.

Regulatory procedures require environmental and hazardous material surveys to determine the status of lands for which the Secretary is requested to assume a trust responsibility. Environmental analysis is governed by the National Environmental Policy Act (NEPA). NEPA analyses help us make sound land transfer and management decisions and involves the time and effort proportional to the issues raised by a particular land transfer. Depending on the type of environmental review done, this process can take months or years. A Categorical Exclusion (CE) is available for meeting NEPA responsibilities when there has been previous environmental documentation or there will be no change in land use for compliance with NEPA. This allows us to proceed with an efficient NEPA environmental analysis.

As of April 28, 2008 we have received 1,489 requests,² including the 215 applications that were prioritized in October 2007. Of the 1,489 requests received to date, 89 have been completed, 266 have been determined and 90 have been withdrawn. 613 pending requests lack sufficient information for us to proceed with the applications. Of the remaining 363 land-into-trust applications:

- 178 pending applications are waiting on local government comments or tribal responses to those questions;
- 45 are undergoing NEPA analyses;
- 35 are being surveyed for hazardous materials impacts; and
- 105 are being reviewed to determine if there are title-related issues that must be resolved before a land-into-trust determination can be made.

716 of the pending non-prioritized requests are for land located within, or contiguous to, the tribe’s reservation boundaries and are non-gaming. The remaining requests were either submitted by individuals, located off-reservation, or by tribes with no historical reservation lands, or were for gaming or gaming-related purposes.

In October 2007, 215 requests were determined to have sufficient information for us to proceed with regulatory procedures for bringing land into trust. At that time, 26 of the 215 priority land-into-trust applications were in the NEPA Compliance stage and 66 were in the Hazardous Material Survey stage. As of April 28, 2008, 10 of the remaining 79 undetermined prioritized applications were waiting on NEPA analyses and an additional 12 were undergoing Hazardous Material surveys. The proportion of applications in the NEPA Compliance stage has decreased by 50 percent, while the proportion of applications in the Hazardous Material Survey stage has decreased by 73 percent. As of April 28, determinations have been made for 128, or 62 percent, of these applications. We have also made determinations on an additional 227 other applications and have approved the transfer of approximately 40,027 acres of land into trust status.

While applications for off-reservation lands must go through a review before Central Office before they are returned to the Regional Offices for decision-making, this review is no longer a logjam for pending requests. The BIA currently has no off-reservation files pending at Central Office for review. We had 42 applications in October. All applications have been returned to the Regional offices with recommendations and the final actions will take place at the regional level.

Environmental Impact Statements

In our October 4, 2007, testimony, we provided extensive comments on the Environmental Impact Statement process whereby an Indian tribe submits a request to the BIA to fund, issue a permit for, or approve an undertaking. When such a request is received, the BIA reviews it to determine whether it qualifies for a CE or Finding of No Significant Impact (FONSI) under NEPA or whether an EA or EIS is needed to help inform a federal decision. The most common BIA “federal actions” are lease approvals and transfers of land into or out of trust status.

²These applications were either opened after October 10, 2007 or were in our possession as of that date and have not yet been completed.

In that testimony, we stated that there are three occasions during the EIS process that require a notice in the Federal Register: (1) the “Notice of Intent to Prepare an EIS” at the start of the process, (2) the “Notice of Availability of a Draft EIS” when a draft EIS is completed and issued, and (3) the “Notice of Availability of the Final EIS” at the time the final EIS is completed and issued. When the BIA is the lead agency, it prepares and issues the “Notice of Intent to Prepare an EIS.” At this time, there are no pending DEIS ready for publication.

The length of time necessary to prepare an EIS depends on the complexity of the proposed project. In addition, public comment may point out weaknesses in the EIS that require further studies or assessments before the Final EIS may be issued. Additional time may be required to coordinate and meet other agency needs and requirements on the EIS. Delays also occur when the Federal EIS is stalled because the tribe alters the project plan or scope.

The BIA is current on its processing of all EISs and in its publication of them in the Federal Register. This backlog has been eliminated.

Appraisals

In prior testimony, we stated that in FY 2002, pursuant to Secretarial Order, the management and operation of the real estate appraisal function was transferred from the BIA to the Office of the Special Trustee for American Indians (OST). This transfer was conducted to eliminate the appearance and potential for a conflict of interest that could arise in response due to the reporting structure that required appraisers to report to the BIA Regional Directors who were requesting the appraisal. In FY 2005, funding for the program likewise was transferred to the OST.

Appraisals are requested by the BIA when required for a trust transaction. The BIA issues the appraisal request to the OST Office of Appraisal Services (OAS) which conducts the appraisal and returns the completed valuation to the BIA for its use. OAS appraisers aim to complete appraisals to meet the due dates requested by BIA.

Currently, the OST has 2,564 appraisals pending. Of this number approximately 1,300 can be disposed of rather quickly. DOI is reviewing our appraisal process and the method of recording the appraisal backlog. Through the use of mass appraisal technology and consistency of the method of reporting backlog, we believe this number will be reduced significantly in the near future.

Lease Approvals

In October 2007, we provided comments on commercial development leases and stated they may involve tribal land, allotted land, or both. These leases are typically negotiated by representatives of the parties. As a result, the appraisal needed to establish an acceptable “Minimum Rent” and the documentation needed to comply with NEPA, are often not obtained by the lessee until after the basic lease terms have been agreed upon. We recommend that to expedite the process, appraisals may be obtained with the cost to the lessee, and submitted for review and approval by the Department’s Office of Appraisal Services.

Currently, we have 93 commercial leases pending approval. In our twelve Regions, we have three Regions with no backlogs: the Southern Plains Region, Eastern Region and the Eastern Oklahoma Region. The remaining regions have leases that have been pending for over 30 days backlog as follows: Alaska Region—1, Navajo Region—1, Midwest Region—1, Great Plains Region—8, Rocky Mountain Region—8, Pacific Region—9, Western Region—19, Northwest Region—22, and the Southwest Region—24.

This concludes my testimony. I will be happy to answer any questions the Committee may have. Thank you.

The CHAIRMAN. Mr. Artman, thank you very much for your testimony.

Next, we will hear from Robert Chicks, who is the NCAI Vice President for the Midwest Region, and President of the Stockbridge Munsee Tribe of Mohican Indians.

Mr. Chicks?

**STATEMENT OF ROBERT CHICKS, VICE PRESIDENT FOR THE
MIDWEST REGION, NATIONAL CONGRESS OF AMERICAN
INDIANS (NCAI); PRESIDENT, STOCKBRIDGE MUNSEE BAND
OF MOHICAN INDIANS**

Mr. CHICKS. Good morning, Mr. Chairman, and thank you for inviting NCAI to return and testify today.

The previous hearing was very important, we think, in pushing the Bureau to focus on its fundamental mission in managing tribal land transactions, and we hope that this hearing will continue in that same direction.

First, we want to acknowledge Mr. Artman's efforts to address the backlog over the last seven months. He made a good start in identifying problems and setting priorities. But we are concerned that Mr. Artman is now leaving the BIA with so much left to be done. I would urge the Senate Committee on Indian Affairs to play a strong oversight role in the coming months to make sure that this progress continues. Although the Bureau has made an effort in addressing backlogs, it is only a start. The vast majority of realty transactions are still sitting in limbo waiting for action.

Though Mr. Artman just provided a new set of numbers and updated them, the numbers that were shared with the tribes just a few weeks ago showed us that there were about 1,310 applications and that 125 had been decided, and the Bureau was claiming progress on about 57 percent.

The CHAIRMAN. What category is that?

Mr. CHICKS. Land to trust applications.

From our perspective, that is less than 10 percent because the great majority of applications have been disqualified as incomplete. This might help the Bureau's numbers, but it is not any help to the affected tribes.

The real problem is that there has been no communication with the tribes on the status of our applications, and many tribes have had applications pending for so long that we really doubt if they were even included in the tracking system to begin with. For example, as you mentioned, Mr. Chairman, the Chairman of the Standing Rock Sioux Tribe testified that his tribe had 10 applications for land into trust that had been pending since 1992. We contacted the tribe to find out if any progress had been made in the last seven months and they told us that not only has no progress been made of any kind, but they have not been contacted by the Bureau. My own tribe, the Stockbridge Munsee, the last time that we had land put into trust it took 10 years, and we currently have applications that are pending that are more than six years old.

I have also attached to my testimony a letter from the Southern Ute Tribe to the BIA. The Southern Ute Tribe has 20 pending applications, of which 15 have been pending for more than eight years. These types of delays are simply unacceptable.

The Bureau must take next steps and communicate with the tribes about pending applications. It also needs to establish time frames and a system of accountability for responding to our applications. We certainly would like to work with the Bureau to make this happen.

We also have serious concerns that one of the ways the Bureau has addressed the backlog was to issue sweeping new rules to deny

applications. As you know, on January 4th of this year, the Department issued a guidance document establishing a new rule that land acquisition for gaming is not in the best interests of the tribe if the land in question is greater than a commutable distance from the reservation. On the same day, the Department used its new rule to deny 11 pending applications.

While NCAI does not take a position for or against any tribe's application for land into trust for gaming, it is extremely important that each tribe has an opportunity for fair consideration of its applications. We are gravely troubled by the process that Interior used to establish new guidance and, I might add, with no consultation as required by law.

Land into trust is only one area where we have concerns about how much actual progress has occurred. Long delays in title and leasing have not changed. In particular, we would urge the Committee to investigate the status of the TAAMS title system and how it is working.

Finally, we would encourage the Committee to review our earlier testimony which contained suggestions for addressing the issues in BIA realty. More importantly, the system needs more funding and staffing. The backlog of decision-making in BIA realty has been a leading concern for tribal leaders for many, many years.

NCAI strongly encourages the Bureau to continue to take action in consultation with tribal leadership, and we applaud this Committee for pushing this issue so strongly.

Thank you.

[The prepared statement of Mr. Chicks follows:]

PREPARED STATEMENT OF ROBERT CHICKS, VICE PRESIDENT FOR THE MIDWEST REGION, NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI); PRESIDENT, STOCKBRIDGE MUNSEE BAND OF MOHICAN INDIANS

Chairman Dorgan, Vice Chair Murkowski and members of the Committee, thank you for the opportunity to return and testify today on this important topic. NCAI provided testimony seven months ago on our concerns about the backlog of realty functions at the Bureau of Indian Affairs, and the negative impacts on tribes. The Bureau of Indian Affairs' core mission is the management and restoration of the tribal lands where tribal communities live and govern their own affairs. Indian land is critical to tribal economies and cultures. Our testimony focused on proposed solutions to improve the performance of the BIA on realty functions.

First, we want to acknowledge Assistant Secretary Carl Artman's efforts to address the backlog over the last seven months. We tend to view the BIA's backlog problems as systemic—arising from understaffing and increasing work loads. We have been impressed with the way that leadership can also make a difference. Mr. Artman set priorities, managed the available staff and worked to expedite decision making. It gives us some optimism about the future that leadership can make a difference at the BIA.

Second, we are concerned that Mr. Artman is now leaving the BIA with so much left to be done. The Bureau of Indian Affairs has suffered significantly from instability in management during this Administration. Mr. Artman is the third Presidential appointee to hold the position, he was on the job for only one year, and the position was vacant for over two years prior to his confirmation. The NCAI leadership has met with Secretary Kempthorne to discuss our concerns, and we would urge the Senate Committee on Indian Affairs to play a strong oversight role in the coming months.

Third, although the BIA has made an effort in addressing the backlogs, it is only a start. The BIA Realty office has developed some management tools so that they can track the progress on realty transactions. That is a good development, but the vast majority of realty transactions are still sitting in limbo waiting for action.

We also have questions about the methods that the BIA is using to show progress on the backlog. For example, the following numbers on land to trust requests come from a BIA Realty presentation in March:

Where We Started—October 2007

- 1,310 pending land-into-trust requests representing 1,070,000 acres
- 217 applications ready to be processed
- Inconsistent procedures
- No accountability

Where We Are—March 10, 2008

- 57 percent (125/217) priority cases decided—Enough information to make a decision
- 25 percent (55/217) priority cases complete—Land has been conveyed
- 37,368 acres approved for trust status

This is a funny kind of math. 1,310 applications, 125 have been decided, and the BIA claims progress on 57 percent. The problem is that the great majority of applications have been disqualified as incomplete or not ready to be processed. This may help the BIA's numbers, but it is no help at all to the affected tribes. There has been no communication with the tribes on the status of their applications; there are no guidelines on what is a complete application; and there has been no progress at all on 90 percent of the tribal applications. Even worse, a huge number of applications are now categorized as incomplete and will see no action by the Bureau of Indian Affairs. We are also not confident that the 1,310 number is accurate. Many tribes have had applications pending for so long that they were unlikely to be included in the tracking system.

The BIA must take the next steps and communicate with the tribes about pending applications to identify incomplete information and about the status of applications that may not be in the system. The BIA also needs to establish time frames and a system of accountability for responding to applications. We would like to work with the BIA to make this happen, but our overall point is that the BIA is just getting started.

For example, at the previous hearing on this topic Chairman Ron His Horses Thunder from the Standing Rock Sioux Tribe testified that his tribe has ten applications for land into trust that have been pending since 1992. We contacted the Standing Rock Tribe to find out if any progress has been made in the last seven months. They report that there has been no progress of any kind, nor have they been contacted by the BIA about the status of their applications.

Standing Rock is just one of many examples. At Stockbridge Munsee, the last time we had land put into trust it took ten years. We currently have applications pending that are over six years old. I am also attaching a letter from the Southern Ute Tribe to the Bureau of Indian Affairs. The Southern Ute Tribe has 20 pending applications, of which 15 are have been pending for over eight years. They have received no action since they sent this letter to the BIA well over a year ago. These types of delays are unacceptable and must be addressed by the Bureau of Indian Affairs.

We also have a serious concern that one of the ways the BIA has addressed the backlog was to issue sweeping new rules to deny applications. On January 4 of this year, the Department issued a document entitled "Guidance on taking off-reservation land into trust for gaming purposes," establishing a new rule that land acquisition for gaming is not in the best interest of the tribe if the land in question is greater than a "commutable distance" from the reservation. The document justifies this decision by reference to the Secretary's discretionary authority to take land into trust under Section 5 of the IRA. On the same day, the Department used this new rule to deny eleven pending applications.

NCAI is an organization made up of over 250 tribal governments, and we do not have a position for or against any tribe's application for land into trust for gaming purposes. However, as a matter of federal policy it is extremely important that each tribe has an opportunity for fair consideration of their application on its own merits based on the laws passed by Congress. We are gravely troubled by the process that Interior used to establish new guidance and the manner in which it used this new policy to summarily reject so many pending applications. In addition, this new policy was created absent consultation and with no discussion about its implications for non-gaming acquisitions of land under Section 5 of the Indian Reorganization Act (IRA). Indian tribes regularly seek to place off-reservation land into trust for purposes of economic development, natural resources protection, and cultural and religious use. Because of the history of removal and tribal land loss, it is not uncom-

mon that these lands are greater than a “commutable distance” from existing reservations.

Land to trust is only one area where we have concerns about how much actual progress has occurred. Long delays in title and leasing have not changed to our knowledge, and we do not have any way of assessing the claims that the Department is making about progress. In particular we would urge the Committee to investigate the status of the TAAMS title system and how it is working. The BIA has made a huge investment in TAAMS, and it is the backbone of the entire realty system. The BIA claims to have met a number of recent milestones, but we do not yet have any independent evaluation of how TAAMS is working, whether it will streamline realty processes, and how it interfaces with other critical components of the system such as accounts receivable and leasing.

Finally, we would urge the Committee to review our earlier testimony with suggestions for addressing the systemic issues in BIA Realty. The system desperately needs more financial resources and staffing to accompany process improvements. We also believe Congress should revisit Title III of S. 1439 from the 109th Congress, which would increase tribal control over reservation land management. Indian reservations vary widely in their needs for land management services, and under these plans Indian tribes would be able to create reservation-specific land management plans and allocate the available funding according to the needs of that particular reservation.

Conclusion

The backlog of decision making in BIA realty has been a leading concern of tribal leaders throughout the country for many years. NCAI strongly encourages Congress and the Administration to take action on these issues, in close consultation with tribal leadership. We thank you in advance, and look forward to working with you.

Attachments



SOUTHERN UTE INDIAN TRIBE

February 8, 2007

Ross Denny, Superintendent
Bureau of Indian Affairs
Southern Ute Agency
P.O. Box 315
Ignacio, CO 81137

Larry Morrin, Regional Director
Bureau of Indian Affairs
Southwest Regional Office
P.O. Box 26567
Albuquerque, NM 87125-6567

Lynn A. Johnson, Regional Solicitor
U.S. Department of the Interior
Office of the Solicitor, Southwest Region
505 Marquette Ave., NW Suite 1800
Albuquerque, NM 87102

W. Patrick Ragsdale, Director
Bureau of Indian Affairs
1849 C Street, NW, Mail Stop 4141
Washington, D.C. 20240

Re: Southern Ute Indian Tribe trust land applications

Dear Messrs. Denny, Ragsdale, and Morrin, and Ms. Johnson:

I am writing on behalf of the Southern Ute Indian Tribe to express concern regarding several of the Tribe's applications to transfer fee land into trust currently pending before the BIA at the Agency or Regional level. Fifteen of the twenty pending applications were submitted more than eight years ago and the remaining five were all submitted at least three years ago. A list of the pending applications providing the property names, Southern Ute Indian Tribal Council resolution numbers, the status of the applications as we understand them, and the number of years since the applications were submitted is attached to this letter.

Nine of the twenty properties are blocked at the preliminary title opinion phase of the process. The Tribe does not understand the excessive delay in performing the first steps of the review process. You may be aware that, in July 2006, the Government Accountability Office (GAO) issued a report on its study of delays in BIA processing of land into trust applications across the country. Of the regions it measured, the longest median processing time it found was 6.1 years. Yet, the Tribe's applications alone show a median processing time of well over 10 years with the result that 0 out of 20 have been completed.

The 2006 GAO report shows increasing congressional interest in the delay problem, and the Department of the Interior and the BIA have begun a rulemaking to impose a 120-day timeline on trust application processing. The Tribe intends to participate in legislative and administrative meetings and requests for comments to express its desire to have its applications completed in a timely fashion. The Tribe understands and appreciates the difficulties attendant on inadequate

P.O. Box 737 + IGNACIO, CO 81137 + PHONE: 970-563-0100

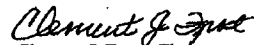
Mr. Ross Denny, Superintendent
Mr. Larry Morrin, Regional Director
Ms. Lynn A. Johnson, Regional Solicitor
Mr. W. Patrick Ragsdale, Director
Page 2
February 8, 2007

budgets and chronically short resources, as well as the bureaucratic complexities of multi-step reviews such as this one. Neither Congress nor the BIA has provided adequate guidance for review of applications. Nonetheless, the delays the Tribe has experienced are unacceptable and appear to be disproportionate to the activities in other BIA regions.

Additionally, pursuant to a Taxation Compact among the Tribe, State of Colorado, and La Plata County, Colorado, the Tribe makes a payment in lieu of taxes (PILT), to the County for land the Tribe owns in fee status. Once the Tribe's fee property is transferred into trust, no PILT payment is owed. Delay in BIA processing of the Tribe's transfer applications, therefore, is causing the Tribe to incur continuing PILT payment obligations.

The Tribe places a priority on transfer of its fee lands into trust in order to realize the advantages that the trust status affords. The Tribe is unable to realize these benefits if its completed application packets are not processed in a timely manner. We request that the Agency and the Southwest Region take the necessary steps to complete review of the pending trust applications by the Tribe as soon as possible. Please let me know if my office or the Tribe's Lands Division can be of assistance in any way.

Sincerely,


Clement J. Frost, Chairman
Southern Ute Indian Tribe

Attachment

cc: Senator Ken Salazar
Senator Wayne Allard
Representative John Salazar
James Formea, Director, Southern Ute Department of Natural Resources
~~Byron Frost, Southern Ute Lands Division Head~~
Sam W. Maynes, Esq.
Monte Mills, Director, Southern Ute Legal Department
Christine Arbogast, Kogovsek & Associates

The Southern Ute Indian Tribe's Pending Transfer Requests

	<u>Popular name</u>	<u>Resolution</u>	<u>Status</u>	<u>Years since request</u>
1.	B. Espinosa	No. 95-76	Preliminary title opinion requirements are being addressed.	11
2.	Cox	No. 96-236	Preliminary title opinion requirements are being addressed.	10
3.	Herrera	No. 96-236	Preliminary title opinion requirements are being addressed.	10
4.	Hutchinson #1	No. 96-236	Final title opinion has been requested.	10
5.	Hutchinson #2	No. 96-236	Final title opinion has been requested.	10
6.	Four Corners Industries	No. 96-236	Final title opinion has been requested.	10
7.	Wilcox	No. 96-236	Final title opinion has been requested.	10
8.	Red	No. 96-236	Final title opinion has been requested.	10
9.	Samford/Atencio #1	No. 97-15	Preliminary title opinion requirements are being addressed.	9
10.	Samford/Atencio #2	No. 97-15	Preliminary title opinion requirements are being addressed.	9
11.	Samford/Atencio #3	No. 97-15	Preliminary title opinion requirements are being addressed.	9
12.	Bondad Compressor Station	No. 97-124	Final title opinion has been requested.	9

13.	Espinosa Brothers	No. 98-160	Preliminary title opinion not yet requested.	8
14.	Young	No. 98-162	Final title opinion has been requested.	8
15.	Hubbard	No. 98-161	Final title opinion has been requested.	8
16.	Sheehan	No. 02-08	Preliminary title opinion not yet requested.	4
17.	Burnell #1	No. 03-26	Preliminary title opinion not yet requested.	3
18.	Burnell #2	No. 03-26	Preliminary title opinion not yet requested.	3
19.	Lee Campbell	No. 03-26	Preliminary title opinion not yet requested.	3
20.	Serafin	No. 03-27	Preliminary title opinion not yet requested.	3

The CHAIRMAN. Mr. Chicks, thank you very much.

Next, we will hear from Mr. Gary Svanda. Mr. Svanda is a Council Member of the City of Madera in Madera, California.

Mr. Svanda, thank you for being here.

**STATEMENT OF GARY SVANDA, COUNCIL MEMBER, CITY OF
MADERA, CALIFORNIA**

Mr. SVANDA. Thank you Chairman Dorgan and distinguished Members of the Committee. On behalf of the City Council of Madera and the Madera County Board of Supervisors, I appreciate the opportunity to provide the Committee with an update from what was reported to you at the October 3rd hearing on the status of the draft environmental impact statement for the project proposed by the North Fork Rancheria at a location north of the City of Madera in Madera County.

Before I do that, I would like to acknowledge two important political leaders from my area, that being Elaine Bethel Fink, the Tribal Chairperson for the North Fork Mono Tribe, and also Mary Ann McGovern, the Treasurer of the North Fork Tribe.

The CHAIRMAN. Thank you. We welcome them here.

Mr. SVANDA. I am happy to report that the draft EIS was finally published on February 15, 2008. Publication of the draft was followed by a 45-day public comment period and a public hearing on March 12th. The public hearing received considerable local attention and was a very well-attended affair. Most striking in my mind was the overwhelming support of the project voiced by nearly two dozen current and former local officials, and that both supporters

and opponents were provided an opportunity to sing the praises or voice their concerns about the project.

The BIA's public hearing on the draft EIS was one of more than a half dozen opportunities that the public has had to weigh in on this project in a formal public setting. Still, it was an important step in the Federal process since it was the first time since the scoping report back in November, 2004 where the public could comment directly on the environmental review process.

This is not to say that the local community has not been actively engaged in addressing local concerns about the EIS or the project. Long before the public hearing on the draft EIS in March, the tribe entered into mitigation agreements with the County and the City of Madera and the Madera Irrigation District. Further, both the city and the Irrigation District are serving as cooperating agencies for the EIS.

I am quite certain that all this public input will result in the most thorough environmental review ever prepared as a project in the history of Madera. All told, publication of the draft EIS was delayed a full year. The Committee is probably as interested as we were in understanding this delay.

Early in January of this year, we learned that the North Fork Rancheria's project was caught up in a comprehensive BIA review of more than 30 off-reservation requests pending nationality. Some-time last year, the Department of the Interior developed a new internal policy and then applied that new policy to each of the pending requests before publicly announcing the new policy in early January. The North Fork Rancheria's application was one of only six off-reservation requests nationally that were allowed to continue under the BIA's new policy because the proposed trust acquisition is within a commutable distance of North Fork. Because the tribe's proposed development is consistent with planned land use for the immediate area around the site, and because the project enjoys very strong local support, the BIA found that the tribe should be allowed to proceed through the next stages of the Federal review.

Shortly after it announced the new policy, the BIA published the draft EIS. As Supervisor Frank Bigelow explained at the October 3rd hearing, both the County and the City of Madera have strong interest in seeing the Federal process move forward. In many ways, the North Fork project has moved from being merely a tribal project to a community project, a true collective effort, as was clearly evidenced at the public hearing.

Both the city and the county have devoted considerable time, energy, and resources in working with the North Fork Rancheria to ensure that the proposed project benefits both the tribe and the entire community.

Madera is now also considering annexing land within our urban growth boundary near the proposed site and is in discussions with other developers who may be willing to invest in our community so long as the tribe's project moves forward and is able to provide the good-paying jobs and the economic engine to jump start our long-stagnant economy. In this way, the tribe's project is helping to pave the way for further economic growth to our region.

Finally, this past April, we learned that yet another community will benefit from this project under two compacts recently signed by Governor Schwarzenegger with the North Fork and Wiyot Tribes. Under the compacts, the North Fork Rancheria would allocate a portion of the revenues from its resort to a State-administered fund that will allow the Wiyot Tribe to forego gaming on its environmentally sensitive reservation located along the beautiful Northern California coast of Humboldt County. Not only does this benefit the environment, it also means that the North Fork project will now directly benefit nearly 2,300 tribal citizens that comprise the two tribes, in addition to the County of Madera, the Cities of Madera and Chowchilla, and indeed many other residents of the Central Valley and Humboldt County.

Again, I would like to thank this Committee for your efforts in moving the Federal process forward. I would be very happy to answer any questions regarding my statement.

[The prepared statement of Mr. Svanda follows:]

PREPARED STATEMENT OF GARY SVANDA, COUNCIL MEMBER, CITY OF MADERA,
CALIFORNIA

Chairman Dorgan, distinguished members of the Committee, on behalf of the City Council of Madera and the Madera County Board of Supervisors, I appreciate the opportunity to provide the Committee an update from what was reported to you at the October 3rd hearing on the status of the draft environmental impact statement (EIS) for a project proposed by the North Fork Rancheria at a location north of the City of Madera in Madera County.

I am happy to report that the draft EIS was finally published on February 15, 2008. Publication of the draft was followed by a 45-day public comment period and a public hearing on March 12. The public hearing received considerable local attention and was a well-attended affair. Most striking in my mind was the overwhelming support of the project voiced by nearly two dozen current and former local officials and that both supporters and opponents were provided an opportunity to sing their praises or voice their concerns about the project. The BIA's public hearing on the draft EIS was just one of more than a half dozen opportunities that the public has had to weigh in on this project in a formal public setting. Still, it was an important step in the federal process since it was the first time since the scoping report hearing in November 2004 where the public could comment directly on the environmental review process. This is not to say that the local community has not been actively engaged in addressing local concerns about the EIS or the project. Long before the public hearing on the draft EIS in March, the Tribe entered into mitigation agreements with the County and City of Madera and the Madera Irrigation District. Further, both the City and the Irrigation District are serving as cooperating agencies for the EIS. I am quite certain that all this public input will result in the most thorough environmental reviews prepared for any project in Madera's history.

All told, publication of the draft EIS was delayed a full year. The Committee is probably as interested as we were in understanding this delay. Early in January of this year we learned that the North Fork Rancheria's project was caught up in a comprehensive BIA review of the more than thirty off-reservation requests pending nationally. Sometime last year, the Department of the Interior developed a new internal policy, and then applied that new policy to each of the pending requests before publicly announcing the new policy in early January. The North Fork Rancheria's application was only one of six off-reservation requests nationwide that were allowed to continue under the BIA's new policy. Because the proposed trust acquisition is within a commutable distance of North Fork, because the Tribe's proposed development is consistent with planned land use for the immediate area around the site, and because the project enjoys strong local support, the BIA found that the Tribe should be allowed to proceed through the next stages of federal review. Shortly after it announced the new policy, the BIA published the draft EIS.

As Supervisor Frank Bigelow explained at the October 3 hearing, both the County and City of Madera have a strong interest in seeing the federal process move forward. In many ways, the North Fork project has moved from being merely a tribal

project to a community project and a true collective effort, as was clearly evident at the public hearing. Both the City and County have devoted considerable time, energy, and resources in working with the North Fork Rancheria to ensure that the proposed project benefits both the Tribe and the entire community. The City of Madera is now also considering annexing land within our urban growth boundary near the proposed site, and are in discussions with other developers who may be willing to invest in our community so long as the Tribe's project moves forward and is able to provide the good paying jobs and economic engine to jump start our long stagnant economy. In this way, the Tribe's project is helping to pave the way for further economic growth to our region.

Finally, this past April, we learned that yet another community will benefit from this project under the two compacts recently signed by Governor Schwarzenegger with the North Fork and Wiyot Tribes. Under the compacts, the North Fork Rancheria would allocate a portion of the revenues from its resort to a state-administered fund that will allow the Wiyot Tribe to forego gaming on its environmentally sensitive reservation located along the beautiful Northern California coast in Humboldt County. Not only does this benefit the environment, it also means that the North Fork project will now directly benefit the nearly 2,300 tribal citizens that comprise the two tribes, in addition to the County of Madera and the Cities of Madera and Chowchilla, and indeed many other residents of the Central Valley and Humboldt County.

Again, I want to thank this Committee for your efforts in moving the federal process forward.

The CHAIRMAN. Mr. Svanda, thank you very much for your testimony.

Finally, we will hear from Douglas Nash, Director of the Institute for Indian Estate Planning and Probate.

Mr. Nash, you may proceed. Thank you very much for being here.

STATEMENT OF DOUGLAS NASH, DIRECTOR, INSTITUTE FOR INDIAN ESTATE PLANNING AND PROBATE, SEATTLE UNIVERSITY SCHOOL OF LAW

Mr. NASH. Thank you, Mr. Chairman. I appreciate the opportunity to be here. Mr. Chairman and Members of the Committee, I would like to express my appreciation to Mr. Artman as well for the time and work that he has put in, and to join the many other who regret his departure from that position.

Mr. Chairman, from anecdotal evidence and personal experience, I believe that little has changed since the last hearing about eight months ago, at least in terms of the backlogs that plague the probate process. It is my prediction that little progress will be realized in the future unless the Bureau of Indian Affairs and/or Congress takes some decisive steps to support the mechanisms that have been created by the American Indian Probate Reform Act to proactively address and reduce the fractionization of tribe trust lands.

The backlog in the probate of Indian estates is a multi-faceted systemic problem with one common denominator: the fractionated ownership of trust lands. The sheer number of fractionated interests, combined with the current and outstanding historic probates, the complexity of those probates as measured by the number of undivided interests held by individual decedents, the lack of a central and robust land title record system that would support timely and accurate multi-jurisdictional title reports, and finally the lack of estate planning and buy-back resources which have proven successful in reducing fractionization and removing interests from the probate process are all part of the problem.

All of these factors contribute to the backlogs in probate now and the continuation of backlogs in the future.

The Probate Reform Act is intended to address the issue of fractionation through intestate succession. If fully implemented and resourced, the Act will substantially and significantly reduce fractionation given time. There are no quick fixes to address an issue that has evolved and grown exponentially over 120 years.

The Act's intestacy laws will stop the further fractionation of small interests, those of less than 5 percent. However, the Act will continue to fractionate all lands greater than 5 percent until that highly fractionated threshold of 5 percent is reached. The new interests will require additional management resources and contribute to the continuation of the probate backlog.

Hundreds of thousands of new interests and owners will be created by the Act without the intervention of estate planning and buy-back programs authorized by the Act. The Act contains specific provisions and authorizations for estate planning and buy-back programs, which reduce fractionation and promote reconsolidation of trust lands. Funding for these programs has been stalled and stymied.

I know from our experience at the Institute, where we designed and administered a program under a one year estate planning pilot project contract from Interior in the fall of 2005 in the amount of \$519,000. The project's purpose was to determine if there was a need for estate planning in Indian Country, and if so, whether estate planning would reduce fractionation of trust lands. The answer to both is unequivocally yes.

The pilot project provided full-time estate planning services to Legal Services programs in Washington and South Dakota, serving specified reservations. The pilot project ended in September, 2006, and an extension of the contract for unspent funds was denied. For reasons unknown to us, a few within the Bureau have characterized the results of that project as having a neutral to negative effect on fractionation. This is contrary to the Bureau's own audit report, our statistical findings, and our experience with other projects we have operated since 2004.

After the completion of the project, the BIA auditor reviewed client files that were developed in the course of the project with appropriate safeguards to protect confidentiality. The auditor concluded that 83.5 percent of the project wills reduced fractionation. Will drafting not only prevented further fractionation of small interests, but stopped the fractionation of thousands of new interests that would have otherwise been created under AIPRA's intestacy rules.

Under the project, 2,600 trust interests were transferred by will to a single heir or as a joint tenancy with the right of survivorship. Of these 2,600 interests, 780 interests were greater than 5 percent, and without estate planning AIPRA's intestacy laws would have further fractionated those into 4,640 new interests and heirs. One hundred percent of the pilot project's inter vivos instruments such as gift deeds totally stopped fractionation.

Equally significant, 519 interests were permanently removed from any further probate proceeding through pilot project conveyances to tribes or buy-back programs, saving the Bureau of Indian

Affairs substantial dollars in what otherwise would have been the continuation of administration probate and management costs. These results are from just one program providing services full-time for nine months and for under \$500,000.

Our Institute is the only entity attempting to provide estate planning legal services to Indian people on a national basis. We develop programs and oversee projects in several States using a number of different models and methods. We have described in our testimony those models and methods that we have used and the results that we have achieved. We believe that the expansion of estate planning services in Indian Country is going to be essential to stop the fractionation problem that contributes so heavily to the backlogs in the probate process.

We have also encouraged in our testimony a reconsideration of the Bureau of Indian Affairs' decision not to store wills, and we understand just recently that that decision has been reconsidered. It is a small, but significant, factor, we believe, that contributes to the backlog.

Finally, Mr. Chairman, we have had an opportunity to review and look at the technical amendments that have been proposed to the Probate Reform Act. We have commented on a couple of those and strongly support those amendments, and believe they will be a help and an improvement.

Thank you very much.

[The prepared statement of Mr. Nash follows:]

PREPARED STATEMENT OF DOUGLAS NASH, DIRECTOR, INSTITUTE FOR INDIAN ESTATE PLANNING AND PROBATE, SEATTLE UNIVERSITY SCHOOL OF LAW

Mr. Chairman, members of the Committee, my name is Douglas Nash. I am the Director of the Institute for Indian Estate Planning and Probate at Seattle University School of Law (<http://www.indianwills.org>). The Institute is a project of the Indian Land Tenure Foundation which is a non-profit corporation in Little Canada, Minnesota (www.indianlandtenure.org). I appreciate the opportunity to participate in the follow-up session to the October, 2007, hearing on the issue of probate and backlogs within the Bureau of Indian Affairs.

I. Probate Backlog

From anecdotal evidence and personal experience, I believe that little has changed since the last hearing about eight months ago—at least in terms of the backlogs that plague the probate process. It is my prediction that little progress will be realized in the future unless the Bureau of Indian Affairs and/or Congress take some decisive steps to support the mechanisms created by AIPRA to proactively address and reduce the fractionation of trust lands.

The backlog in the probate of Indian estates is a multi-faceted, systemic problem with one common denominator, fractionated ownership of trust lands. The sheer number fractionated interests, combined with the current and outstanding historic probates, the complexity of those probates as measured by the number of undivided interests held by each individual decedent, the lack of a central and robust LTRO record system that would support timely and accurate multi-jurisdictional title reports, and finally, the lack of estate planning and buy back resources which have proven success in reducing fractionation and removing interests from the probate process entirely. All of these factors contribute to the backlogs in probate now and the continuation of backlogs in the future.

The American Indian Probate Reform Act (AIPRA) is designed and intended to address the issue of fractionation through intestate succession. If fully implemented and resourced, the Act will substantially and significantly reduce fractionation given appropriate time. There are no quick fixes to address an issue that has evolved and grown exponentially for over 120 years. The Act's Intestacy laws will stop the further fractionation of very small interests, those less than 5 percent. However, the Act will continue to fractionate all lands greater than 5 percent until the highly fractionated threshold of 5 percent is reached. The new interests will require addi-

tional management resources and contribute to the continuation of the probate backlog.

Hundreds of thousands of new interests and owners will be created by the Act without intervention of the estate planning and buy back programs authorized by the Act. The Act contains specific provisions and authorizations for estate planning and buy back programs which reduce fractionation and promote reconsolidation of trust lands. Funding for these programs have been stalled and stymied.

I know this as Director of The Institute for Indian Estate Planning and Probate. We designed and administered a program under a one year Estate Planning Pilot Project Contract from Interior awarded in the fall of 2005 and in the amount of \$519,000.00. The Pilot Project's purpose was to determine if there was a need for estate planning of trust lands and if so, would estate planning reduce fractionation of trust lands. The answer to both was unequivocally yes.

The pilot project provided full time estate planning services to selected tribes in Washington and all tribes in South Dakota utilizing four specially trained legal service attorneys and two legal service paralegals. The Pilot ended in September, 2006 and an extension of contract for unspent funds was denied. For reasons unknown to us, a few within the BIA have characterized the results as having a "neutral to negative" effect on fractionation. This is clearly contrary to the BIA's own auditor report, our statistical findings, and our experience with other projects we have operated since 2004. After completion of the Pilot, a BIA auditor reviewed client files developed in the course of the pilot project, with appropriate safeguards in place to protect confidentiality.

The BIA auditor concluded that 83.5 percent of the pilot project wills reduced fractionation. Will drafting not only prevented further fractionation of small interests, but stopped the fractionation of thousands of new interests that would have otherwise been created under AIPRA's intestacy rules. Under the Pilot, 2,600 trust land interests were transferred by will to a single heir or as joint tenancy with a right of survivorship which vests title in only the last survivor. Of these 2,600 interests, 780 interests were greater than 5 percent and AIPRA's intestacy laws would have further fractionated these into 4,640 new interests and heirs. 100 percent of Pilot Project's inter vivos instruments, such as gift deeds, stopped fractionation. Equally significant, 519 interests were permanently removed from any future probate proceeding through Pilot conveyances to tribes or buy back programs, saving the Bureau of Indian Affairs substantial dollars in what otherwise would have been the continuation of administrative, probate and management costs. These results are from just one program providing services full time for 9 months and for under \$500,000.

Our Institute is the only entity attempting to provide estate planning legal services to Indian people on a national basis. We develop programs and oversee projects in several states, using a number of different models, based upon available funds. Our programs provide estate planning services to Indian people at no cost. We currently have four projects in operation that deliver very limited estate planning services on approximately 20 reservations in six states and these projects are funded by private foundations and tribes. Adequate funding of estate planning will address and eliminate fractionation. Funding is the only obstacle to the expansion of our current projects and the development of new projects. We have resolutions from numerous tribes as well as tribal organizations in support of our work and tribes requesting services but who are waiting until additional funding is secured. Having substantial and long-term funding commitments from the BIA or Congress will greatly facilitate the delivery of estate planning services, and as a result, successfully stem the tide of fractionation and reduce the backlogs in probate.

Our projects utilize a number of different models designed to fit both needs of the communities and the private funding limitations we face. These include the use of specially trained, law student interns who are paid to work on reservations over the summer months; law student externs who receive college credit in lieu of a salary; contracting with legal services programs and training legal services attorneys to work exclusively on estate planning issues for tribal members; a law school clinical program at Seattle University School of Law; paralegal providing services under appropriate supervision; and an evolving volunteer pro bono program. All project personnel are trained to provide community education on AIPRA, fractionation and land tenure issues, as well as offer clients alternatives with regard to the disposition of their interests in trust land—alternatives that minimize or eliminate further fractionation or, in some cases avoid probate all together. Testamentary transfers include leaving whole interests to individual heirs, leaving interests to multiple heirs as joint tenants with a right of survivorship, leaving other assets in lieu of land to some heirs and developing consolidation agreements. Project personnel also provide

information and assistance with life time transfers, such as gift deeds and sales which eliminate the need for probate entirely.

The purpose and intent of AIPRA is thwarted without estate planning services and land consolidation options authorized under the Act. Estate planning services cannot be provided without adequate funding from the BIA or alternately, from appropriations authorized under the Act. Section 2206(f)(4). Unless these services are provided, the benefits that are contained within AIPRA will not be realized and backlogs will continue to increase.

II. Will Storage

When the BIA announced that it would no longer draft wills, it simultaneously announced that it would no longer store wills for tribal members as had been their previous practice for many decades. Withdrawal of will storage services has a significant impact on probate backlogs. A thoughtful estate plan to reduce fractionation is worthless if the family cannot find the will after death and the Bureau has no record of its existence. Additional time is spent in federal probate proceedings when judges must determine the legal sufficiency of a copy submitted when the original cannot be found.

Our project personnel counsel clients about safeguarding and storing originals of wills and providing copies to appropriate individuals. Inevitably, some wills will be lost, destroyed or otherwise unavailable at the time of the decedent's death. Delays in probate will be encountered as a result. Challenges to intestate proceedings in cases where family or friends recall the deceased having done a will are likely to increase, as will arguments for or against uncertified copies. Each will consume time and therefore, expand costs for the probate. Storing Indian wills at the local BIA agency marries well with that same agency's duty to prepare the probate package for hearing. Any additional burden, if any, of will storage would be offset by the time and costs encountered as a result of not providing the service. We encourage reconsideration of the decision of the BIA to not house wills.

III. Technical Amendments

We have had an opportunity to talk with committee staff and review additional technical amendments currently in Senate draft form (S. 2087). We believe the changes proposed will clarify important provisions of AIPRA and further the effective implementation of the Act and reduce potential problems and claims arising from inaction. None of the proposed amendments alter the Acts provisions in a way that would increase the expense of implementation or administration of the Act.

There are several important changes to the Act under this floor draft bill. To be brief, I will only highlight two of the proposed issues and reasoning for change. 25 U.S.C. §2201(7) defines lands to include any permanent fixture attached. There is no differentiation between lands held by the Secretary in trust for the tribe or the individual. The result is, at worst, merger of HUD and Mutual Help Homes onto tribal trust lands contrary to existing federal lending agreements and contracts. At best, the existing language creates a gray area that the probate courts will inevitably have to decide—what is the nature of these homes. The amendment would remove the 2201(7) definition and provide an intestate provision for distribution under 25 U.S.C. §2206 for those homes where the decedent has an ownership interest in the underlying land. Existing federal and tribal contracts, as well as tribal housing codes would be unaffected for those homes tribal trust lands.

Purchase options at probate, 25 U.S.C. §2206(o), is a consolidation mechanism of the Act where a co-owner, heir or the tribe can request to purchase an interest in a parcel during the probate process. For interests greater than 5 percent or any interest passing by a will, consent of the putative heir is required. For interests less than 5 percent passing under intestacy, no consent of the heir is required for sale unless the putative heir lives on that parcel at the time of death. The Act currently measures these interests, not as the interest in probate of the decedent, but as the future expectancy of the heir. The result is that large trust interests of the decedent would be open to forced sale under the provisions of the Act. A simple scenario is an individual dying intestate with a 20 percent interest with five children. The Act's intestacy rules will fractionate this large interest, giving 4 percent interest to each child or the child's estate; and then, the same Act measures the putative heir's unvested land interests at probate for sale without consent at probate. The amendment corrects the Act to measure only the interest of the decedents' at probate, and remove the potential for numerous property and due process claims that would otherwise arise.

IV. Conclusion

I would like to thank you Mr. Chairman, and the Committee, for the opportunity to share this information in testimony today and for your interest in this subject

and this Act which is critically important to many across Indian Country. We would be happy to provide any additional information that we have that would be of interest to the Committee.

Thank you.

The CHAIRMAN. Mr. Nash, thank you very much. We appreciate your testimony.

Mr. Artman, let me start with the question that was raised by Mr. Svanda. Chairman Ron His Horse Is Thunder testified about the 10 applications they have had pending since 1992 about land into trust status. Has anything happened on those?

Mr. ARTMAN. We just spoke with Chairman His Horse Is Thunder yesterday about those, as well as with our people that were in the field on that. Since the hearing that took place in October, we tried to identify which applications he was speaking about specifically. From what we have been able to gather from both the Standing Rock Sioux people and our people is that, indeed, we can't find these in the system. They are sending us the information to help us track it better. Perhaps it is in the system and we just aren't using the right key words or the right identifiers.

Nevertheless, we are working closely with the Standing Rock Sioux to make sure that if they are not in the system, to get them into the system and get them processing quickly.

The CHAIRMAN. I think we held our hearing eight months ago. Why would you wait until yesterday to contact this tribe?

Mr. ARTMAN. We were just giving Chairman His Horse Is Thunder an update on where we were on this as well.

The CHAIRMAN. I understand. But my point is, he raised that in a hearing eight months ago and they have heard nothing from the BIA apparently until yesterday?

Mr. ARTMAN. No. We have been working with them before that. In saying that we spoke with Chairman His Horse Is Thunder yesterday, that was by way of where we were, giving him an update on what we were doing.

The CHAIRMAN. If these exist, you can't find them in the system. Let me tell you that you are the third Assistant Secretary in this Administration. All have lasted about one year or a year and a half. The last Assistant Secretary, Dave Anderson, said he resigned because he felt "stymied" in his position and did not receive support from his subordinates or political higher-ups.

Is there validity to Mr. Anderson's comments?

Mr. ARTMAN. I am not sure what Mr. Anderson's reasons were for resigning. I haven't spoken with him about it. If by implication, you are putting his comments on me, I think that the work that we have accomplished in advancing probates, leases and fee to trust, that is a team effort. In fact, just about a month ago I spoke with 700 of our fee to trust employees, LTRO employees, realty specialists, managers, regional directors, everyone who contributes to the system, at a trust conference in Denver. The enthusiasm around the room for the work that they were doing was excellent.

I have heard a lot of comments from folks that say that they are excited to be able to process the applications, to be able to get them into trust. It has been stated clearly that we do want to take land into trust. By putting the performance standards on our regional directors, and those performance standards are pushed down

through their ranks, this is not only something that is being said in words, but it is also being exhibited through actions as well.

Probates and leases, again having a two-thirds reduction in the number of commercial leases and staying on track to complete the probates by Fiscal Year 2009, I think shows enthusiasm. So stymied from below, certainly not. That takes everyone, and Secretary Kempthorne has shown strong support for economic development which the fee to trust applications, probate, and commercial leases all plays into that economic development as well.

The CHAIRMAN. But Mr. Nash says, "from anecdotal evidence and personal experience, I believe little has changed since the last hearing eight months ago." Mr. Chicks says that the land into trust charts you put up are a funny kind of math. You started in October of last year with 1,310 pending land into trust requests and 125 have been decided out of 1,310. That is 8 percent or 9 percent. And yet you come up with the number of 57 percent because you say 217 applications are ready to be processed.

Your response?

Mr. ARTMAN. Yes. One of the things that we did last year, one of the first things I mentioned in the October hearing on backlogs, is I mentioned that if you were to ask us what we have in trust in any category that is in the pipeline, I wouldn't be able to tell you. One of the first things that we did when we were preparing for that hearing, starting at the preparation point for that hearing, and you have been seeing it up to now, is making sure that we know exactly what we have in the pipeline.

That is not just the number that we have in the pipeline, but also the categories, the kinds of applications that we have in the pipeline. It is not funny math to say that a certain number of applications don't have sufficient information. You can break it down into any number of categories looking through the 151 regulations, be it 151(10) and 151(11), and say that you need maybe 10 or 15 boxes checked off, if not more, if you are going to get down to the sub-levels of the fee to trust process.

If you don't have those boxes checked off prior to being submitted to the BIA, it simply can't be processed. There is nothing that we can do about it. There may have been a point in time in the history of fee to trust where you could submit a description of the land along with a resolution from the tribe to take the land into trust, but because of regulations, guidelines, court cases, laws, statutes, or legislation passed into law, new restrictions have been created or new processes have been created, everything from NEPA, Hazmat, to communications with the local folks. All those things have to be taken care of before we get there. Those are things we can't do.

When we do get them, what we do now is we are able to say, okay, of those approximately 1,400, we had 215 that we could do right away, and those we have been addressing consistently. I think we have approximately 62 percent of those done. Those are the ones we could do.

Of the other ones, we have been working closely with the tribes when possible. I say when possible, because I have heard anecdotal evidence out of the agencies, out in the regional level, that there

has been bad communication. But for the most part, I would say that that is the exception, and not the rule.

The CHAIRMAN. Mr. Artman, you indicated that, and I hate to use North Dakota as an example, but you indicated that you can't even locate the 10 that were submitted in 1992 presumably by the Standing Rock Sioux Tribe. So of the 1,310 pending, that is how many you know are pending.

First of all, it is gross incompetence that prior to you getting there, there was not a tracking system. That is stunning incompetence. I mean, I don't know why we pay salaries of people that don't understand you have to have a tracking system. How do you keep track of things when they come in if you don't have a tracking system?

Second, you say there are now 1,310 pending as of October of last year, but the 10 that one of the witnesses described in front of this Committee last October you say that you have no record of them. So how do you know the 1,310 represents the population of applications or requests?

Mr. ARTMAN. Well, I think you state a very important point, that you can't have progress if you can't measure. And that is one of the first things that we try to do is put into place a foundation for measurement.

With regard to the 10 out of North Dakota, and I know Chairman His Horse Is Thunder well, and I am not happy that those are missing. I am not happy that any would be missing in the system. We went through an extensive data call last fall to try to round up everything. With that, we have to assume that the number that we are working with, and it is 1,489 that are in the pipeline now, that that is what we have in the pipeline. I think after speaking with Standing Rock and getting the requisite information, it is maybe 1,499, but we do have our limitations in terms of determining exactly what is out there. There may have been mistakes in the past in how this information was collected and catalogued, but we are working to correct those I think quickly.

The CHAIRMAN. Mr. Artman, let me ask about the point, and then I will turn it over to my colleagues, that I made at the opening. Driving up near an Indian reservation and seeing oil development all around it, but none on the reservation, despite the fact that the oil industry told me they want to be drilling on that reservation, but cannot. So the Indians on that reservation are cheated, in my judgment.

We raised this issue last fall. The agency is short-staffed, so the regional office submitted in February a request for more permanent employees. Limited detailed employees were provided by other agency offices but for a short period of time. Other regional offices have two to three times the realty staff. Someone asked me this weekend, why are they trying to do this out of Aberdeen? First of all, they don't have the capability and the experience. Why don't they do this out of Denver, where they do have the experience?

The point of it is this: You tried to put some resources in there, but it was just a small amount of resources for a short period of time. We have an Indian reservation that is very much like the building I showed you last year—a building that sat open for over a year. It was a beautiful, new building built by a tribe, and they

are proud of it, but they couldn't get anybody in it because the BIA wouldn't approve the lease. So, the building sat for a year completely empty. Complete incompetence.

It seems to me there is complete incompetence here with respect to this. The largest oil play in this Country, in the lower 48, right now is in eastern Montana and western North Dakota. That oil play is aggressive, except the Indian reservation, which is right in the middle of it, is experiencing none of it. They can't drill wells there for 100 reasons that deal with the bureaucracy.

I do not understand it. If I sound angry, I am. I sometimes think that we ought to abolish this agency and just start from scratch, hiring people who understand if you are going to have applications coming in on anything, maybe you should track them, give them a number, give them a locator number.

When I got my MBA and my first job, I put together a system in the first place I worked and I understood that. It is not rocket science. It is unbelievable to me the staggering incompetence here. You have been there for a year. You, I think, have made some progress, but frankly I think it is less than you suggest. That is for us to discuss I think in greater detail.

I have other questions, but let me call on my colleague, Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Artman, I want to go back to what Mr. Chicks has described as funny kind of math. In his statement, he provides that the problem is that the great majority of applications have been disqualified as incomplete or not ready to be processed. This may help the BIA's numbers, but it is no help at all to the affected tribes.

Is there accuracy to Mr. Chick's statement in your opinion? What really is going on?

Mr. ARTMAN. I would correct two words in Mr. Chicks's quote. It is not the majority. It is 613 so far that have not been disqualified, but that we have simply informed the tribe that we don't have enough information for us to process the application. We need for the tribe to submit more information.

Senator MURKOWSKI. Then once you have made that determination that you don't have sufficient information, do you then kick it out and say we have tackled that one?

Mr. ARTMAN. No.

Senator MURKOWSKI. How does that count?

Mr. ARTMAN. The agency or the region, depending upon which tribe it is, works with the tribe to get that information, to inform them of what they need to do. In many cases, depending on which agency and which tribe, there is technical assistance offered to work them through the process. Most of the tribes out there have sophisticated land offices, real estate offices, and know this process well, so oftentimes it is just a noting of the fact that we may not have a certain letter from the community, or we may not have a tax statement, or we may not have a lien statement. That is all it is, and then the application is resubmitted.

We are not looking at these in terms of lineal progression. It is not a first-in/first-out, but we are looking at this in terms of what can we do now, and that is why we have the fee to trust tracking system.

Senator MURKOWSKI. I just want to make sure that I understand. When you say first-in/first-out, is it kicked out then for lack of sufficient information? Then when they submit that information that is deemed to be sufficient, do they start all over?

Mr. ARTMAN. No, ma'am, and it is not a first-in/first-out system. The way that we have set up our fee to trust tracking system now, we have categories. Once those categories are completed, it will move into our stage where we can now take over the application and finish it. The onus is now on us to complete it.

They are not kicked out. They are not disqualified. They are not termed inactive. The case is still open. It just hasn't hit that stage where we take it over. Like I said before, we work with the tribes to make sure that we can collect sufficient information to bring it up to the stage where we can now consider it.

Senator MURKOWSKI. Let me ask you a question, Mr. Nash. For decades, the BIA had provided technical assistance for Indian estate planning. Just a few years ago, the Department then announced that it would no longer store Indian wills or give the will-writing assistance to Indian landowners.

I believe that Mr. Artman said this morning that, and I think you phrased it that outside contracting may not necessarily be needed. I don't know if it is in the area of estates.

Do you believe, Mr. Nash, that there is still a need to provide funding to outside organizations to provide for, for instance, the estate planning services?

Mr. NASH. Yes, Senator, I believe that very strongly. With the Bureau no longer providing estate planning or will drafting services as they did in the past, with the passage of the Probate Reform Act, the Act complicates estate planning for Indian people who own interests in trust land.

The Bureau previously drafted wills for people who had trust interests. As you know, many Indian people own non-trust real property, as well as personal property. In our experience, many times a client has a need for a will that will comply with Federal and State, as well as tribal laws regarding probate and wills. So it has become very complicated. Very few people, attorneys throughout the Country whether in Legal Services or private practice, are trained on the details and intricacies of the Probate Reform Act. Consequently, we believe that unless there is funding for estate planning services such as the project that we oversee and provide, the estate planning process in addressing fractionation is just going to continue to get worse.

Senator MURKOWSKI. Mr. Artman, I was just informed yesterday that the BIA has decided that the Alaska region would no longer have its own education program people, and that the Education Program Office that serves Alaska has been consolidated with the Portland region. My office has also been getting some complaints that we have a number of Alaska school districts that were expecting to receive Johnson- O'Malley money pursuant to certain tribal resolutions, and they haven't received anything this year.

When they made contact with the BIA, basically BIA told them we will look into it. It is my understanding that the amount of money we are talking about here is in excess of \$300,000. I just wanted to ask if you were aware of this situation and, if not, if you

can see that it is looked into. As I say, I just learned about this yesterday, but it is something that causes me concern in these eight different areas.

Are you familiar with this?

Mr. ARTMAN. I am not familiar with either one of those, Vice Chairwoman, but we will look into this and get a response back to you today or tomorrow.

Senator MURKOWSKI. I would appreciate that.

And then I have also had an opportunity in the past to ask you about the situation that the Association of Village Council Presidents in Bethel, they had a situation with regard to their Indian reservation roads funding. There had been, well, I don't know if there was a typographical error or whether there was an error in somehow or other communicating the funds that would be made available. I am wondering if you have any update on that situation?

Mr. ARTMAN. Yes, ma'am. Our stated goal was to get that situation corrected. It has been corrected and our target date to get that money into the account and transferred over to the village is June 11th, I believe. We do think it will happen sooner than that, though.

Senator MURKOWSKI. Okay. Well, if you have any more specific details that you want to provide me or my staff, I would appreciate that.

Mr. ARTMAN. We will get you a written confirmation of that.

Senator MURKOWSKI. And then just one last quick question. I am kind of cleaning up here, knowing that you are on your way out. We have long had conversations about the situation with the BIA office, the Alaska Regional Office there in Juneau, and the prospect of that office moving from Juneau to Anchorage. Do you have any update on that situation for me?

Mr. ARTMAN. We were looking for some additional information. I believe that Niles Caesar, our Regional Director in that area, is in the process of preparing that. I have not signed off on any transfer of the regional office from Juneau to Anchorage.

Senator MURKOWSKI. Do you believe that that is eventually what happens with that office?

Mr. ARTMAN. From the economic data that we were looking at, I would think that someday that will happen.

Senator MURKOWSKI. Can you define some day?

Mr. ARTMAN. I don't know.

[Laughter.]

Mr. ARTMAN. I suppose it will depend upon the next person, what he or she may want to do, or the person after that. I don't have a date on that. I don't have any outlook on when that may occur.

Senator MURKOWSKI. Well, as you know, that is an issue for us in the State that we are concerned about. Juneau is having a pretty tough time right now, and the loss of a regional office like this moving to Anchorage is not something that helps Juneau. We had hoped that we would not be seeing that there would be certainly regional offices that are not maintained in that south central area in the capital. So I would like to think that we are not going to be seeing that someday.

Mr. ARTMAN. Okay. I will pass that along, and I will also pass along to the next person, as I committed to you, that before we do anything that we will communicate that with the entire delegation.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso?

Senator BARRASSO. Thank you, Mr. Chairman.

Mr. Chairman, last week the three of us, along with Senator Tester, discussed the idea that the government in Indian Country should just put people in a position to succeed, and then get out of the way. And then you here these comments and look at these delays and you know that once again the government has gone astray from that role.

Mr. Artman, I have concerns. I know your office is working on streamlining processes. I appreciate that very much. Let me read you what I know is happening in Wyoming right now. This has to do with NEPA, the National Environmental Policy Act. Currently, all NEPA work in Wyoming is suspended. All NEPA work is suspended on the Wind River Reservation because personnel there and at the Rocky Mountain Regional Office in Billings believe that none, none of them possess the qualifications to certify NEPA documents under the current BIA regulations, none of them.

The BIA personnel report is that this suspension was prompted by an order, probably coming from your office, to try to simplify the process. The BIA personnel claimed that the process has been so streamlined that it requires an expert to make the decisions and there is no such expert available in either Wyoming or Billings, Montana to deal with it. So it is all suspended. Nothing is being done. Things have come to a complete stop.

Do the requirements that come forth now, are they requiring more training or more certification for the personnel? We talk about the unintended consequences of government action, and it seems that a good plan to streamline something has now brought things to a complete shutdown.

Any comments on this?

Mr. ARTMAN. Senator Barrasso, the situation that you are talking about comes from not anything that has happened recently, but has come from the DOJ standards and the standards that have been promulgated by our office and the solicitor's office previously on what needs to be done under NEPA review. The individual up there who was in charge of that feels that he doesn't have the qualifications to do that. While we might debate on what his qualifications are, I actually think he is a very well qualified individual. He is concerned about the issue, about his own qualifications.

So with that concern, we are trying to work with that office to be able to deal with that issue, be it bringing in people on detail or sending out the work elsewhere for that. Many times with these NEPA reviews, it is putting the person onsite sometimes for as little as five minutes or even an hour to look at it and to walk around. It is as easy as that.

We have well-qualified people throughout the system, and in other areas it is continuing on. This is one of those situations where that has come up. It is an obstacle and we are trying to deal with that.

Senator BARRASSO. So when can I tell my people in Wyoming that they are going to have the training or the personnel that they need on the Wind River Reservation?

Mr. ARTMAN. I don't have a date for you today, Senator Barrasso, but it is something that we are acutely aware of and that we are working on. I will make sure that we do get a date to you when we have some better information.

Senator BARRASSO. Obviously, the sooner the better. It is unfortunate that in your efforts to streamline the situation, we resulted in absolutely nothing happening.

Let me go to the next question. The Wind River Reservation does not have a resource management plan. This presents some difficulties for completing a NEPA analysis. Local staff report that lack of funding and manpower for the project prohibit them from moving forward to draft a resource management plan.

It seems that preparing a plan like that would be a good way to gain efficiency for the future. The Bureau could spend money up front and save the time, save the money on subsequent analysis. Is that sort of investment encouraged by the agency to go ahead and draft a resource management plan? How can the Wind River Agency move forward to get that done?

Mr. ARTMAN. Resource management plans are a good investment because it does help to knock down obstacles into the future. It does help to streamline the process because individuals are working within the parameters that they understand, that have been set for them. We will be happy to work with the Billings office to make sure that that does happen along with this.

Senator BARRASSO. Finally, last week Mr. Cason was here. I discussed a project that is ongoing on the Wind River Reservation to update the irrigation system. The project was appropriated \$7 million a couple of years ago. So far, only \$200,000 has been spent. When you hear the story of problems with archaeological studies, problems with contracting, problems with disbursement, it seems that the agency is creating hoops to jump through. The Chairman earlier said it seems like there are 100 hoops to jump through. It is not just one hoop. It just goes on and on and on.

Mr. Cason indicated that the Department would get me an update, and I don't know if you can update me on the project today. What is the schedule? What has been planned?

Mr. ARTMAN. I don't have that update for you today, Senator.

Senator BARRASSO. Well, I know it is your final day and you are probably doing other things, but I would ask that your agency move forward and get back on track with that and get a report back to me as quickly as possible.

Mr. ARTMAN. Yes, Senator.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Nash, you indicated that you felt that the report by Mr. Artman was not in concert with what you think is happening. You indicated that you don't see the same progress. Describe that.

Mr. NASH. Yes, Mr. Chairman. Without having delved into numbers or developing statistics, it is our experience from talking with individuals and the inquiries that we get that there are still delays

in the probate process. If there is progress being made on backlogs, it is not one at least we hear about from individuals who contact the programs that we oversee or contact us directly.

A particular personal example, if I may offer that, my aunt who passed away on June 20, 2006, ironically the date that the Probate Reform Act took effect, was an enrolled member at Pine Ridge, and a resident of Nez Perce Reservation in Idaho where she owned interests in five or six different trust allotments. Her death certificate was delivered the very week that she passed away, the probate file being developed there at the northern Idaho agency at Lapwai. No word having come from that office for sometime, an inquiry was made and the probate file had been sent from the Nez Perce Reservation to Pine Ridge where she was enrolled, but where she owned no land interests.

That is now almost two years ago. The most recent inquiry indicated that ownership records in two different systems maintained by the Bureau were in conflict. One showed her owning interests that the other system said she did not know, and vice versa, which raises the specter we are fearful that her father, my grandfather's estate, has not yet been finally probated and he passed away in 1974.

So just a personal example that I think it is a story that others share, others who have family member estates who are involved in the probate process.

The CHAIRMAN. Mr. Nash, thank you.

Mr. Chicks, you indicated in your testimony that the Southern Ute Tribe has 20 pending applications, I believe that is land into trust. Of which, 15 have been pending for over eight years. They have received no action since they sent this letter to the BIA well over a year ago. Tell me about that. You say that you have personal knowledge of this, that the Ute Tribe has received no response?

Mr. CHICKS. We attached a letter from the Southern Ute Tribe. It should have been included in the testimony. With it is a list of a number of pending applications, and shows how many years they have been out there. What I am looking at, it shows a minimum of nine years going up to eleven years.

The CHAIRMAN. In the letter, it says nine of the twenty properties are blocked at the preliminary title opinion phase of the process.

Mr. Artman, how could that be the case? It seems to me that title opinions, you just ratchet your way through those and find the people to do the search and make the judgment. How can that be blocked for eight years?

Mr. ARTMAN. Without seeing the records in front of me, we are not going to stop something at the PTO level unless there is something wrong with it. There may be conversations going on with the Southern Ute Tribe on the title status of those specific lands. Oftentimes, there may be liens. There may be encumbrances or other issues associated with the title that won't allow it to come into trust.

The CHAIRMAN. There is always an answer for these things, but it is never one that is very satisfactory. If you have 20 applications that are filed and pending for over eight years, most of them for

over eight years, and the first step, which is the title opinion, is not even completed.

You know what? It seems to me like we have just an unbelievable mess down there. I will be the first to say that you perhaps have made some marginal improvement in the last eight months, but it doesn't sound to me like we have it together. I don't have an inventory of these cases; I have only asked you about two. I know about the Standing Rock issue. I asked you about the Ute Tribe. And in both cases, well, you know, we don't know about that.

At any rate, I remain very frustrated by the BIA. I think there are tribes out there that are very disadvantaged. I am not insisting on what the answer should be. When someone files a request to the BIA, I believe that the tribe has a right not to wait a median of six years, which I think the previous GAO report suggested. That is just untenable. It makes no sense. That is a terrible disadvantage to Indian tribes who are struggling to try to deal with desperate poverty and other issues, and get some economic development going. What they discover is that the Bureau of Indian Affairs is a stumbling block for them, rather than providing assistance to them.

Mr. ARTMAN. If I may, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ARTMAN. And I completely understand where you are coming from. Having been on the other side and having focused on fee to trust when I was working with the United Tribes of Indians of Wisconsin as their Chief Counsel, that was certainly an issue that we focused on quite a bit, was how do we make the process work better. So I understand the tribes' frustration, and I certainly understand the frustration of the Senate as well.

Since our last hearing on this issue eight months ago, we have made a lot of improvement. In that time, we have managed to take into trust 53,000 acres of land, which is far more than ever before. Like I said, what makes this happen is not what happens here. This is only part of it. What makes it happen are the folks that are in the agencies, that are in the regions, that are out in the field every day working eye to eye with the tribes and trying to get these applications through. It is an extremely dedicated staff.

While we may find examples where we may not have an application or things may have taken a long time, the people at the agency level understand what is going on there, understand the problems, and are probably working to resolve it. I think that certainly in the last year, the folks at the field level have been given the indication that this is not lip service, but that we expect results in the fee to trust area and in other areas. They have delivered those results to us.

So I think that even though we do have these situations, overall there is going to be improvement and it will continue to improve.

The CHAIRMAN. If we don't even have tracking systems, which was the case up until you started one in this area, it is staggering incompetence to me. So I am probably less generous in my assessment of what kind of resources exist. But you are not asking for additional resources. At least you don't tell us you are asking for them. So the Administration sent us a budget and we will limp

along here and there will be oil development in my State, all except on the Indian reservation where there is the greatest need.

I don't know. I think that Senator Murkowski and I and others ought to try to think it through. How do you penetrate this bureaucratic mess? I think it is a mess and it has been a mess a long, long time.

Let me just ask you one quick question. If I am a tribe and I file an application today on land into trust, is there any guideline that would suggest that somebody ought to make at least the initial decision on the title opinion before two years elapse or four years elapse or six years elapse? Is somebody going to be dealing with a guideline that you have put in place?

Mr. ARTMAN. Yes, they will be.

The CHAIRMAN. What is the guideline for a land into trust application for the first step to be completed, which is the title opinion?

Mr. ARTMAN. That is one of the first steps. What we don't have in this handbook are the time lines in which they are to be done, for a number of reasons, one of which you mentioned, which is staffing. But also because this is a foundational level handbook. As we begin to implement these processes, one mandate of the handbook is to also have annual conferences with the tribes and the regions, to look at exactly what is happening there and making sure that we are doing things correctly.

The PTO process should not take two years. With the overwhelming majority of these applications, it hasn't taken two years nor will it continue to take two years. I am not sure why the Southern Ute have that issue. It may even be with the Southern Ute as to why it is taking two years. Maybe they can't get a lien or an encumbrance waived or dislodged from the particular title. But we do work closely with the tribes in doing that.

Having been on both sides of it, I can say that certainly the folks who are on the frontlines of this are very conversant. There is communication between the tribes and the BIA on these applications.

The CHAIRMAN. Well, Mr. Artman, I wish you well. I know that today is your last day and I regret that, but I think we are going to try to work through it. I am going to try to take just a couple of these examples and work through them and see is there some extraneous issue that has these things pending for ten years or six years or eight years. Is this really a dedicated group of understaffed people who don't even understand the need for tracking systems? I am going to try to understand this some, because we don't stand a ghost of a chance of fixing any of it unless the processes are right and unless we have adequate staffing. That is just a fact.

Senator Murkowski?

Senator MURKOWSKI. It makes me wonder, Mr. Chairman, as we talk about the BIA and the processes and the problems that just seem to be inherent and the inefficiencies, recognizing that so much of the system is kind of interconnected or interrelated.

Mr. Chicks, you acknowledged this when you were here in October, recognizing that you have all these steps, and if one part of the process gets kind of sidelined for whatever reason, the backlog just accumulates almost exponentially.

It makes me wonder, and I will pose this to all of you, if it would help if the Indian tribes had more or greater control of the whole

process along the way, similar to what we are trying to do with the new Indian energy law. Do you think that that would help?

Mr. Nash?

Mr. NASH. Senator, speaking primarily in the probate area, the Probate Reform Act does cause a change in tribal authority and rules in probates, most significantly in terms of developing tribal probate codes that can alter some provisions of the Probate Reform Act. Tribes can, for example, establish their own rules of intestate succession and have that apply at probates of their members' estates as opposed to the provisions of the Act itself. That is a good step. It is a step forward.

However, it is one segment, and because the Probate Reform Act and the Federal probate process focuses and deals with trust interests, that system is always I think going to be there, so all of the problems involved in the development of probate files at the Bureau of Indian Affairs, the acquisition of land title records, all of those problems that we see now I think will continue in the probate process. The delivery of some authority to tribes, while helpful, isn't going to have any major impact on that.

Senator MURKOWSKI. Probate is pretty distinct that way.

Mr. Chicks, what do you think?

Mr. CHICKS. Well, you know, a couple of things here. There is not any real meaningful interaction between the Bureau and the tribes over the land in trust process. Now, you know, Mr. Artman said that they issued a handbook this week. I am not sure what is in there or what that will solve, but there is no set way that a tribe is instructed to submit an application. There is not an application form. It is really difficult as a user to try to understand how we ought to be submitting these applications so that they don't get bumped out of the system or they don't get disqualified.

I think that what we learned today is really disturbing, all the numbers. And when I call it a funny kind of math, I think that is true, to learn that with the Standing Rock Tribe that they are not even able to identify where those 10 applications are. I don't think that is just an anomaly. I think it is probably just the tip of the iceberg.

I said in my testimony that we are very suspicious of this original 1,310 number because we just don't think that many of the applications were even included in the tracking system. There is no way. If the Bureau can't identify where they are, where does that leave us? If we call up and ask what is the status of our application, we are never given any kind of direct answer at all.

It is a difficult system for a user to use. You can see that it is an impossible system for the owner to manage. There is no real communication. I think it stems from the minute the application is submitted to when it is approved. There are many benchmarks along the way that many times the tribes aren't even aware of, that their application is being assessed and judged and they have no knowledge or no way or assessing that information and helping to improve the chances of moving that application.

Senator MURKOWSKI. Mr. Artman, let me ask one last question of you. Recognizing that you are departing the BIA, and knowing that you won't have to implement this, what would be the one thing that you had hoped that you could have done, but weren't

able to do? You don't need to explain why you weren't able to do it, whether it is funding or staffing or whatever. But if you could have done one thing that would have helped this process, what do you think would have helped to make a difference?

Mr. ARTMAN. I think in the comments that have been made here today on both sides that it is clear that we do have some issues in the fee to trust process. Those are some older regulations based on an old law and the times have changed and quicker procedures are needed.

It is inherently a trust function, and it makes it difficult to hand something like that over to the tribe. Obviously, we are currently going through a number of lawsuits right now on just that very issue, on managing trust. So there needs to be a way that we can do it faster and better. I think that we made some headway in that area, but it would be nice to be able to make additional headway in it.

One of the things we considered early on was do we tear the entire system down and build it up from anew, starting with the regulations, and then the next course would be actually implementing not just the regulations, but also the goal of those regulations. Maybe you do need to tear down the entire fee to trust system and bring it back up. By issuing guidelines, by issuing the handbook, we are hoping that this is going to be a sufficient way to deal with some of these issues, but I know it is not going to be enough to accomplish all of it. Again, as the Chairman has mentioned, there has been some chaos and havoc over there, but we are beginning to get a handle on it, and hopefully that trend will continue.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Senator Murkowski, thank you very much.

We thank the witnesses for appearing today.

This hearing is adjourned.

[Whereupon, at 10:55 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN
COMMUNITY

I. Introduction

Chairman Dorgan and distinguished Members of the Committee, thank you for the opportunity for Gila River Indian Community (“the Community”) to provide an update on the status of issues raised by the Community during the October 4, 2007 hearing on “Backlogs at the Department of Interior.” As detailed in the Community’s written testimony for that hearing, the Community has, over the years, experienced a variety of communications difficulties and delays concerning the responsibilities of the Bureau of Indian Affairs (BIA) for lease approval, rights-of-way documentation, and land appraisal that have posed challenges to the Community’s economic development and land consolidation efforts.

At the October 7 hearing, you indicated a particular interest in the status of the master building lease for the Wild Horse Pass Corporate Center, the occupancy of which was delayed due to concerns raised by BIA regarding the commercial terms of the lease. We are pleased to report that the building is now 70 percent occupied by tenants and that the lease is no longer part of the BIA backlog. This testimony discusses the current status of that building in further detail. This testimony also reports on some continued BIA appraisal delays affecting the Community’s land consolidation efforts and makes specific recommendations regarding expediting such appraisals.

II. Lease Status

A. Master Ground Lease

Our written October 2007 testimony described two lease delay issues. The first was with regard to a master ground lease for a 2,400 acre parcel between the Community and a wholly-owned governmental development authority. That lease was submitted to BIA for approval and then became mired in delay due to the scope of the lease and issues about the extent to which duplicative EIS and EA review would be required. The Community decided to withdraw that lease and it is thus no longer part of the BIA backlog. The Community came to that decision because it determined that it is most efficient from the Community’s standpoint to submit leases to BIA for review on a project-by-project basis rather than as one large ground lease. In that manner, the scope of BIA review is more easily defined for each individual lease and each lease moves through the review process more smoothly. The Community is not expecting to re-submit another large acreage master ground lease to BIA in the foreseeable future.

B. Master Building Lease

The second lease delay issue raised in our October 2007 written testimony was with regard to a master building lease for the Wild Horse Pass Corporate Center (“Corporate Center”). The Corporate Center is located on Reservation trust land. It was totally self financed by the Community and is currently managed by the Wild Horse Pass Development Authority (WHPDA), a wholly-owned Community enterprise. The land parcel for that building was originally part of the above-mentioned master ground lease but, prior to the hearing, it was carved out as a separate lease and separately submitted to BIA for review. An EA was completed for the parcel.

The Community had questions from the start as to why BIA would need to review a lease for commercial office space between the tribe and a wholly owned governmental enterprise and associated subleases. Prior to the October hearing, the Community had shared a draft of the master building lease and the office sublease form with the Pima Agency to facilitate review, followed by formal submission of the master building lease. It was not until after formal submittal that BIA began to raise issues, despite our submittal of drafts for early review. In addition, the BIA raised issues related to the commercial terms of the master building lease that we believed

to be outside the scope of any BIA review authority. The Pima Agency and the regional BIA office were also not coordinated on the lease review, and it resulted in delay and frustration on our part. As a result, the Community was left without any clear understanding of what issues BIA was asking it to resolve in order to present a lease which would be acceptable. The back and forth with BIA on the lease terms delayed occupancy of the building and resulted in lost lease income.

It was at this point of high frustration that the Community testified before you on this issue. After the interest shown by you at the hearing on the status of the building, BIA officials from the regional office and Pima Agency contacted the Community and several productive meetings were held at which BIA categorically stated in clear terms what was required for lease approval. The primary sticking point holding up BIA lease approval involves WHPDA as an office tenant. The master building lease allows WHPDA to rent space in the Corporate Center for fair market rent but does not specify an amount. It also requires WHPDA to sublease office space to paying tenants (non-Community entities) at or above fair market rent. The master building lease leaves it to WHPDA (the tenant) to make this determination. The BIA believes that the initial market rent WHPDA pays to the Community should be specified in the master building lease. The BIA understands that WHPDA is a government enterprise of the Community but apparently disagrees with WHPDA as tenant determining what market rent shall be (*i.e.*, setting its own rent). The BIA's concern can be easily addressed but it illustrates what the Community thinks is BIA over-involvement in an internal matter of the Community; *i.e.*, what rent the Community is going to charge one of its own entities for occupying office space.

Based on those meetings, the Community decided to withdraw the lease from BIA review in order to further consider the issues raised by BIA. Therefore, the lease is not pending with BIA at this time. However, given that tenants subleasing space in the building have entered into enforceable leases with WHPDA as authorized under the master lease between the Community and WHPDA, the Community has proceeded with filling the building with both tribal and private tenants. The Corporate Center includes approximately 70,000 rentable square feet. Currently, approximately 50,000 square feet are occupied. Current tenants include Community government departments (which pay operating expense but no other rent) and private businesses (which pay market rent).

Currently, WHPDA is transitioning under a change in management and has a number of projects on which it is working. As such, the task of modifying and resubmitting the master building lease for BIA approval is not as pressing as other projects given that WHPDA is able to sublet office space currently. WHPDA anticipates resubmitting the master building lease to BIA later this summer and we would anticipate an efficient review and approval process.

III. Appraisal Delays

A. Background and Status

In our October 2007 testimony, the Community also highlighted delays at BIA with issuance of land appraisals that are hindering the Community's land consolidation efforts. Despite the high rate of fractionated land within the Community's reservation, the Department of Interior is no longer undertaking ILCA land consolidation efforts at the Community due to the high cost of land in the Phoenix region. Therefore, the Community has established its own tribal land consolidation program to purchase and consolidate land interests that become available through allottee land sales and through allottee probate proceedings.

In order to purchase allotted land, an appraisal by the Secretary is required. The Office of Special Trustee (OST) is tasked with responsibility for securing appraisals and is significantly backlogged in this process. At this time, the Community has approximately 150 appraisal requests pending at some stage of the BIA or OST review process. Since September 2007, the Community has received only 3 land appraisals from BIA necessary to purchase land, despite the numerous requests pending.

The Community, as part of its land consolidation efforts, has also actively sought to purchase intestate land interests as an eligible purchaser under the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2206. AIPRA was passed by Congress in 2004 and became effective on June 20, 2006. The AIPRA provides a Purchase Option at Probate which authorizes the Secretary of Interior to sell trust or restricted interests in certain intestate lands. An Indian tribe with jurisdiction over the interest is an eligible purchaser. To exercise the option, the tribe must submit a written request to purchase the land and prior to the sale of an interest, the Secretary must appraise the interest.

Since mid-January 2008, the Community has received 29 "Notice of Purchase Option at Probate" ("Notices") and 49 "Notices of Case Referral to Office of Hearings

and Appeals for Determination of Deciding Official” (a precursor to the Notices) from the Department of Interior’s Office of Hearings and Appeals (OHA) pursuant to AIPRA. The Community expects to continue to receive 5–10 such Notices each week. The OST is responsible for conducting appraisals for all trust land and has a considerable backlog of appraisals already pending. Appraisal delays extend the probate process and prevent the Community from acquiring land interests as an eligible purchaser through probate as part of its land consolidation efforts.

B. Recommendations

1. Market Surveys

Under the Indian Land Consolidation Act, the Community was able to purchase fractionated interests in allotted land on the Reservation the value of which was based on an OST prepared “Market Survey” that valued each individual allotment on the Reservation. *See* 25 U.S.C. §2214. Using a Market Survey, the value of fractionated interests of allotments can be derived relatively easily, and without OST having to complete a full appraisal of each allotment. However, the Community has been informed by OST that such Market Surveys are not permitted under AIPRA and that OST has received no further guidance on AIPRA and use of Market Surveys for appraisals. It is our recommendation that through issuance of regulation, if possible, or by amendment to AIPRA that Market Surveys be permitted by BIA in order to expedite such appraisals in the interest of promoting land consolidation efforts and reducing appraisal backlogs for probate purchases.

2. Community Appraisers

The Community has employed a surveyor at its Land Use Planning and Zoning Department who can assume a key role in undertaking appraisal responsibilities. BIA has indicated willingness and interest in assisting the Community with taking on more responsibility for conducting appraisals. We await greater guidance from BIA on how the Community can assume responsibility for conducting land appraisals that are required as part of its land consolidation efforts.

IV. Conclusion

We would like to take this opportunity to thank Assistant Secretary Artman for the seriousness with which he took our concerns in the face of the substantial criticism that BIA faced at the October hearing. Over the six months following the hearing, we have come to acknowledge that central to many of the concerns we raised at the hearing was our intense frustration with a breakdown in the relationship between BIA and the Community on these and other issues. Assistant Secretary Artman impressed us with his immediate understanding of the legitimate basis for our concerns about the responsiveness of BIA as it functions in its role as our trustee. He also showed professionalism in the way he actively addressed our issues and integrity in the manner with which he has fulfilled his role. As he leaves office tomorrow, we thank him for his efforts on our behalf and wish him all the best in his future endeavors. We have a renewed optimism, as a result of his efforts, about the Community’s ability to partner with the Department on an ongoing basis to achieve mutual goals.



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**FRANK BIGELOW
SUPERVISOR, DISTRICT 1**

Written Testimony
Before the Committee on Indian Affairs
United States Senate

OVERSIGHT HEARING to "Follow Up on the status of Backlogs at the Department of the Interior"

May 22, 2008

Chairman Dorgan, distinguished members of the Committee,

I would like to express my appreciation for the invitation to return before you to report the progress accomplished since I last testified before you in October 2007 relating to the draft environmental impact statement ("EIS") for the North Fork Rancheria project. It is with great sadness that prior commitments prevent me and my colleagues on the Madera County Board of Supervisors from being able to testify again before the Committee this week. Specifically, the California State Association of Counties (CSAC) is holding its long-planned 2008 Annual Legislative Conference and Board of Directors meeting on May 21 and 22 in Sacramento. As you may recall, I serve as an officer of this organization on the Executive Committee as the immediate past president. In addition, the current Chairman of the Madera County Board of Supervisors, Ronn Dominici, serves on the organization's Board of Directors. Other members of the Board are similarly tied-up and unable to attend this hearing on short notice.

Madera County is confident, however, that Mr. Gary Svanda, City of Madera Councilmember and former Mayor is uniquely positioned to provide follow-up testimony regarding the importance of timely processing land-into-trust applications such as the North Fork Rancheria's. First, as a cooperating agency for the EIS, the City of Madera provides an additional perspective regarding the enormous influence federal processes and decisions have over local economic development, land use, and zoning planning. Second, the City of Madera, Madera County and the City of Chowchilla constitute the political jurisdictions of Madera County. Both the City and County of Madera has an agreement in place with the North Fork Tribe relating to project mitigation and revenue sharing which I am sure Mr. Svanda can discuss in detail. Last but not least, Mr. Svanda is deeply familiar with the proposed project having served as one of the initial liaisons from the City to the project's development team and thus been involved since its inception in 2003.

Once again, I would like to express my personal appreciation for your Committee's important contribution to unblocking the logjam that we discussed last fall. The release of the North Fork Rancheria draft EIS following a review of the project by the Department of the Interior under its new restrictive policy for off-reservation acquisitions was a significant step forward for the project. I'm sure Mr. Svanda can relate in greater detail the success of the subsequent public hearing for the draft EIS held in Madera, CA on March 12, 2008.

Sincerely,

Frank Bigelow
Supervisor, District 1