

**TESTIMONY OF  
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U.S. DEPARTMENT OF THE INTERIOR  
BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
OVERSIGHT HEARING  
ON  
THE CURRENT STATUS OF BACKLOGS**

**DECEMBER 9, 2009**

Good morning Mr. Chairman, Vice Chairman, and members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) update on the current status of backlogs in Indian Affairs. As you know, the Department provided updates on "backlogs" previously on October 4, 2007, and on May 22, 2008 in oversight hearings on land into trust applications, environmental impact statements (EIS), probates, and appraisals. In those testimonies provided to this Committee, overviews of each item and the procedures that Indian Affairs' follow, as set forth in statute and regulation, were included. Therefore, my testimony today will focus on our updates on current numbers in probate, land-into-trust acquisitions for non-gaming purposes, environmental impact statements, appraisals, and commercial leases. My testimony will also address a few accomplishments since the last hearing in May 2008.

**PROBATE**

In prior testimony we stated 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. As of November 20, 2009, the Division of Probate was monitoring 71,238 cases, of which 16,099 were currently moving through the probate process and 55,139 had been distributed and closed, determined to have no trust assets requiring a Federal probate, or otherwise required no current Federal action.

In May 2008 we stated before this Committee that as of April 28, 2008, 99 percent of the backlog cases completed the case preparation phase and were ready for adjudication and distribution of assets, and 88 percent of the backlog cases had been closed.

Those percentages we presented in May 2008 were used to demonstrate that that the BIA was still on track to clear the probate backlog by the end of 2008. An independent audit of the probate workload, conducted in 2009, concluded that probate backlog casework is substantially complete and no longer represents a management issue for the BIA.

We also stated that by this year, 2009, BIA staff should be able to handle the probate cases without help from outside contractors. Administrative requirements to re-compete the primary probate casework contract delayed completion of the Probate Caseload Reduction project. Project completion is now anticipated mid-year 2010. Upon successful completion, the Division of Probate should be able to handle the ongoing probate caseload in a timely fashion without contract assistance.

### **TRUST LAND ACQUISITIONS FOR NON-GAMING PURPOSES**

Significant progress has occurred in processing land-into-trust requests. We stated in our May 2008 testimony that we implemented a fee-to-trust tracking system.

Last year we reported that we had received 1,489 requests,<sup>1</sup> including the 215 applications that were prioritized in October 2007. As of November 20, 2009, 99 of the priority applications had been completed or withdrawn by the applicant and determinations had been made on additional 99 applications.

In October 2008, BIA published a Fee-to-Trust handbook. This handbook standardized procedures for reviewing and making determinations on on-reservation land-into-trust applications. Six months later, after meeting with over 100 tribal leaders, Indian Affairs removed a major logjam from the process by revoking a standing policy requiring applications for off-reservation lands to go through a Central Office review. While Central Office continues to provide assistance upon request, decision authority for all land-into-trust applications has been delegated to the Regional Offices. Applications have been returned to the Regional offices with recommendations, and the final actions are now taking place at the regional level.

Currently, we have received a total of 1,935 requests. As a result of the standardization and streamlining efforts, 454 of the requests have been completed or withdrawn by the application and determinations have been made on 342. Seven hundred and sixty four of the pending 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.

However, since February 2009 an additional challenge presented itself in the U.S. Supreme Court's decision in *Carcieri v. Salazar*.

The Department was, and continues to be, disappointed in the Court's decision in the *Carcieri* case. The decision was not consistent with the longstanding policy and practice of the United States to assist all tribes in establishing and protecting a land base sufficient to allow them to provide for the health, welfare, and safety of tribal members, and in treating tribes alike regardless of the date of acknowledgment. The Court's decision

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<sup>1</sup> These applications were either opened after October 10, 2007 or were in our possession as of that date and have not yet been completed.

hinders fulfillment of the United States' commitment to supporting Tribes' self-determination by clouding – and potentially narrowing – the United States' authority to protect lands for tribes by holding the lands in trust on their behalf.

Furthermore, the *Carciari* decision has disrupted the process for acquiring land in trust for recognized tribes by imposing new and undefined requirements on applications now pending before the Secretary. The decision has called into question the Department's authority to approve pending applications, as well as the effect of such approval, by imposing criteria that have not previously been construed or applied.

### **ENVIRONMENTAL IMPACT STATEMENTS (EIS)**

In our October 4, 2007 and May 22, 2008, testimony, we provided extensive comments on the National Environmental Policy Act (NEPA) environmental review process with a focus on the Environmental Impact Statement (EIS) process. As stated in those testimonies, we do not have a backlog of EISs. The cases described below are pending applications that are currently under review.

When an Indian tribe submits a request to the BIA to fund, issue a permit for, or approve a proposed action requiring a BIA federal action, the BIA determines the proper level of NEPA review. For certain actions that don't have the potential for significant environmental impacts, BIA may issue a Categorical Exclusion (CE) and the NEPA process is complete. If the application does not qualify for a CE, an Environmental Assessment (EA) must be completed. The EA will lead either to a Finding of No Significant Impact (FONSI) or to a determination that the effects of the Federal decision may have a significant environmental impact and a decision to perform an EIS.

The length of time necessary to prepare an EIS depends on the complexity of the proposed project. The time frame depends on several factors. For instance, other agency needs and requirements must be taken into consideration. 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 currently has the following pending EIS's: Pacific: 17, Northwest: 5, Eastern: 3, Midwest: 1, Navajo: 1, Great Plains: 1, Rocky Mountain: 1, Southwest: 1 and Alaska: 0, Western: 0, Eastern Oklahoma: 0, and Southern Plains: 0.

### **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, OST's OAS has 1,754 appraisal requests pending, of these 257 are past due. Of the total number pending, approximately 50% are scheduled for completion by the end of the month. OAS is implementing a new tracking system that is scheduled for deployment by March 31, 2010. OAS continually evaluates appraisal processes to streamline efficiencies while ensuring that valuations comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

### **LEASE APPROVALS**

In May 2008, we made a recommendation based on the fact that commercial development leases may involve tribal land, allotted land, or both, and those leases were 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 continue to recommend that outside appraisals be accepted, as an alternative to appraisals performed by the Department's Office of Appraisal Services (OAS), and submitted for review and approval by the OAS.

In May 2008, we reported that we had 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, 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.

Currently, we have 69 commercial leases pending approval for 12 months or longer. Seven regions reported no outstanding commercial lease applications: Alaska, Eastern, Midwest, Navajo, Rocky Mountain, Southwest and Western. The remaining regions have pending leases as follows: Eastern Oklahoma: 1, Great Plains: 1, Pacific: 13, Northwest: 52, and Southern Plains: 2.

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