

**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 THE BACKLOG**

**MAY 22, 2008**

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.<sup>1</sup> 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**

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<sup>1</sup> The 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.

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 Reorganization 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<sup>2</sup>, 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

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<sup>2</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.

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.

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.