

**United States Senate Committee on Indian Affairs
Oversight Hearing to Follow Up on the Status of
Backlogs at the Department of the Interior**

**Testimony of Robert Chicks
NCAI Vice President for the Midwest Region and
President of the Stockbridge Munsee Band of Mohican Indians**

May 22, 2008

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

This is a funny kind of math. 1310 applications, 125 have been decided, and the BIA claims progress on 57%. 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% 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 uncommon 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.



COPY FOR
YOUR INFORMATION

SOUTHERN UTE INDIAN TRIBE

February 8, 2007

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

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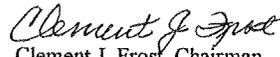
Mr. Ross Denny, Superintendent
Mr. Larry Morrin, Regional Director
Ms. Lynn A. Johnson, Regional Solicitor
Mr. W. Patrick Ragsdale, Director
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budgets and chronically short resources, as well as the bureaucratic complexities of multi-step reviews such 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