

**Testimony of William R. Rhodes, Governor of Gila River Indian Community
before the Senate Committee on Indian Affairs**

**Oversight Hearing on “Backlogs at the Department of the Interior: Land into
Trust Applications; Environmental Impact Statements; Probate; Appraisals
and Lease Approvals”**

October 4, 2007

Introduction

I am Governor William Rhodes of the Gila River Indian Community (the “Community”). On behalf of the Community, I want to thank you, Chairman Dorgan and other distinguished Members of the Committee for this opportunity to submit written testimony on the impact of Bureau of Indian Affairs (“BIA”) administrative delays on tribal economic development.

By way of introduction, the Gila River Indian Community was formally established by Executive Order in 1859. The Community was thereafter expanded several times and currently encompasses approximately 375,000 acres. The Community is comprised of the Akimel O’odham (Pima) and the Pee Posh (Maricopa) people. We are the largest Indian Community in the Phoenix metropolitan area, with an enrolled population of over 19,000. We have a long history in the Phoenix Valley, dating back thousands of years.

Over the years, the Community has experienced BIA delays in a number of areas that have detrimentally impacted the Community’s economic development initiatives. Of particular concern to this hearing, the Community has experienced significant delays in obtaining BIA approvals of leases of tribal land. These delays result in lost economic opportunities to the Community in situations in which potential development or tenant deals are never culminated and in which the Community does not realize lease revenues for months while lease agreements are pending BIA approval. It is important at the outset for the Committee to note that the Community’s reservation is located in the very rapidly growing Phoenix metropolitan region and, in many instances, its tribal business ventures compete with non-Indian commercial entities that are sometimes literally located across the street from the reservation. Therefore, when the

Community faces bureaucratic challenges at BIA that affect the operation of its tribal business ventures, it puts the tribe at a competitive disadvantage compared to entities not subject to BIA leasing oversight. Although the Department of Interior is supposed to support the policy of tribal economic development, our competitors only gain from the BIA lease approval delays we experience.

As described below, the Community is particularly concerned with the BIA's imposition of unnecessary regulatory burdens in the review and approval of commercial leases of space within existing tribal buildings – bureaucratically-created, anachronistic burdens that evidence a clear lack of understanding of the competitive and time-sensitive commercial leasing market in which the Community seeks to compete for tenants. The Community has also encountered problems associated with the BIA's failure to properly document rights-of-way throughout the Gila River Indian Reservation which have impacted the Community's business agreements and land management planning. Additionally, the Community has experienced considerable BIA delays in relation to approval of appraisals associated with the Community's land acquisition process, such that the Community's efforts to acquire allotted lands within the Community's Reservation are frustrated.

This testimony focuses on specific areas where the Community has seen firsthand the impact of BIA delays on its tribal economic development. This testimony also proposes some short-term and long-term solutions for addressing the issues identified. These delays, as described below, impact delivery of a variety of BIA services to the Community to such an extent that the quality of the trust relationship between BIA and the Community is being negatively affected.

I. BIA Review of Commercial Leases

A. Master Ground Lease Approval Delays

The Community has suffered from the ramifications of BIA delays with respect to its commercial leases on a number of occasions. As an illustrative example, the Community has

been in protracted discussions with the BIA lasting over a year now regarding a Master Lease between the Community and a wholly-owned governmental Development Authority created by the Community to develop a 2,400 acre parcel. The Master Lease is a ground lease for development of a parcel of land that will allow the Development Authority to sublease land to tenants for an industrial park and retail establishments, among other uses. Each month the Master Lease remains pending at BIA, the Development Authority cannot sublease the land under the Master Lease and a proposed business park and retail development have no tenants.

The Master Lease is valuable to the Community and the Development Authority because it will help attract non-Indian business tenants and potential business partners to the reservation and generate significant lease revenues. Unfortunately, the Master Lease approval process has been pending over a year and has become mired in unnecessary bureaucratic delay that is impacting the Community's economic development plans. The Community is particularly concerned that the BIA has taken the position on the Master Lease that the Community must conduct an Environmental Impact Statement (EIS) for all the land under the Master Lease. The Community has already conducted the necessary Environmental Assessments (EAs) for a majority of the land that would be subleased under the Master Lease and the EIS will take more than 18 months to complete given the BIA's delays on EIS review as well.

It is hard for the Community to fathom why the BIA would impose this additional requirement on a simple ground lease between two tribal entities, especially when the Community has already conducted EAs for the land to be developed under the Master Lease. Because the BIA has held up approval of the Master Lease for so long, the Community has had to restructure several tribal commercial projects within the proposed lease to avoid significant delays and escalating project costs, and may have to ultimately restructure its long-term development plans for these parcels to avoid unnecessary delays.

B. Office Suite Leases

Moreover, the Community is increasingly concerned with the overly bureaucratic positions taken by the BIA with regard to the agency's responsibility to review and approve

commercial leases of space within already existing buildings. BIA has sought to employ the regulations at 25 CFR Part 162 in reviewing commercial leases of office space. These regulations are designed to protect tribes and allottees from onerous land deals. BIA is using these regulations to impose a variety of requirements, including mortgage-related and lease value requirements, that appear to us to be unrelated to an office building and leasing of commercial office space. Mortgage insurance related requirements have no bearing on a tribally-financed office building that is not carrying bank mortgage.

As one example, the Community constructed a corporate office building on reservation that was sited on land originally included in the Master Lease pending review at BIA, discussed above. Due to the significant delays being experienced at BIA regarding approval of that Master Lease, the Community restructured the scope of the Master Lease to exclude the parcel on which the commercial office space is located in the interest of expediting the Community's ability to lease out that office space separate from the Master Lease. Subsequently, BIA took the position that the commercial space within that building was subject to a variety of BIA lease approval requirements including mortgage related requirements. The Community views the BIA's perceived responsibility to review and approve commercial leases of space within existing buildings to be an anachronistic throw-back to the days of the Indian agent.

The Community, like many Indian tribes across the country, no longer needs the safety net of having the BIA review and approve commercial leases and ground leases of Community lands – including leases of individual office suites. The Community has employed or engaged highly trained professionals to represent its interests in development deals and has successfully negotiated a wide range of commercial transactions without the need for federal bureaucrats to look over the Community's shoulder and micromanage individual office suite leases. These BIA regulations serve as a significant impediment to the successful negotiation and execution of commercial leases in today's business climate. In an era where Indian tribes are directly competing with non-Indian (off-reservation) businesses and developments for commercial tenants and developments, these regulations and the regulatory burdens imposed by the BIA place Indian tribes at a serious disadvantage with non-Indian competitors. We do not understand the BIA's rationale for requiring an EIS for our Master Lease and its overly bureaucratic

approach to the Community's efforts to lease office space within an existing office building. With respect to the office building discussed above, the Community has been forced to find Community entities to begin to fill the office space, and its efforts to find third-party tenants has been delayed and hindered.

The ironic thing about BIA's current posture is that in the past they have allowed lease terms that were unfavorable to the Community, particularly in the Community's industrial parks where the BIA allowed long term leases (60+ years) with poor economic terms, and with industrial tenants who are engaged in noxious activities, including bio-hazard wastes, solvent recycling, munitions testing, which have caused significant environmental harm to the Community. It seems untenable to us that now, when a large portion of a commercial office building space remains empty, the BIA would start to raise a variety of unrelated lease requirements that hinder our ability to lease out the space.

Proposed Solution: With regard to the BIA delays on lease reviews, the solution is for BIA to work with us a pro-active partner, as we do with all of our other business partners. By taking the time to understand our short and long term economic goals, BIA should be working with us to ensure a streamlined lease review process that more accurately reflects the lease market in which we operate and that avoids delay based on arbitrary, unjustified and unnecessary regulatory barriers. The other solution is to grant tribes the authority to review and approve ground leases in their governmental capacity and for BIA to facilitate, through technical assistance or other means, increased tribal responsibility for lease approvals.

II. BIA Documentation of Rights-of-Way

Another area of continuing concern is the failure of the BIA to properly document rights-of-way throughout the Gila River Indian Reservation. By way of example, the Community has established the Gila River Indian Community Utility Authority (GRICUA) to provide electrical service throughout the Reservation. Currently, GRICUA serves a small number of residential customers and a growing number of commercial customers on the reservation. The San Carlos Irrigation Project (SCIP) serves the vast majority of customers, residential and commercial, on

the reservation. In its efforts to analyze the SCIP facilities, GRICUA has made repeated requests for information related to the condition of SCIP facilities on the Reservation without success. Moreover, it is unclear whether the BIA or SCIP have properly recorded rights-of-way underlying the SCIP electric and irrigation systems throughout the Reservation. This became a serious concern when the Community and GRICUA analyzed whether to submit a proposal in response to the currently pending FAIR Act solicitation where BIA intends to privatize SCIP irrigation and electric operations. Without proper rights-of-way across tribal and allotted lands, any operator of the SCIP system could be in an immediate trespass situation. To date, SCIP and BIA have not provided any of the requested information to assist the Community and GRICUA in evaluating the on-reservation SCIP system rights of way.

Proposed Solution: BIA needs to act as a trustee in assisting the Community with resolving rights of way issues in the manner necessary for the Community to be able to proceed with its land management and development plans and to react in a timely manner to the rapid and pressing development occurring along reservation borders. We understand the Committee may be considering a hearing on Rights of Way issues in Indian Country. The Community would be very interested in testifying at such a hearing and proposing at that time some solutions to these over-arching issues affecting Indian Country.

III. BIA Preparation of Appraisals for Land Acquisition Purposes

In addition to BIA delays associated with commercial leases and rights-of-ways, the Community has also seen BIA delays in connection with its land acquisition efforts. Gila River Indian Community was chosen as one of the first tribes to participate in the Department of Interior's Indian Land Consolidation pilot project. The Community was chosen because of the very high rate of fractionated land within the Reservation. After three years under the ILCA pilot project, the Department pulled out of land consolidation efforts at the Community, citing the high cost of acquiring land in the Phoenix region. Since being removed from the ILCA pilot project, the Community has established its own land consolidation program, but has encountered roadblocks in its self-funded effort posed by BIA delays in issuing land value appraisals. As a result, despite the Department's keen interest in assisting tribes with consolidating their

fractionated land base and the fact that the Community is now self-financing the entire land acquisition program, BIA delays are again frustrating an important policy and economic development objective of the Department and the Community.

A. Land Acquisition Process

On April 19, 2006, the Gila River Indian Community Council (the “Community Council”) approved GR-51-06 which enacted the Community’s Land Acquisition Policy (the “Policy”). The Policy outlines a process through which the Community may acquire whole allotments of land within the Reservation owned by Community members or other Indians to prevent the transfer of allotted land within the Reservation to fee status, so that such land is preserved as Federal Indian trust land. Under the Policy, the Community may also consider land exchanges at the request of a landowner. Prior to the enactment of the Policy, the Community Council enacted GR-184-04 which established a Land Acquisition Trust Fund (the “Fund”) to be used for Community land purchases intended for governmental use and purposes and for costs and expenses associated with land acquisitions. The Community Council appropriated millions of dollars to the fund as an initial capital appropriation to the Fund. The Community Council may make subsequent transfers to the Fund as deemed appropriate.

Briefly, the process for land acquisition under the Policy is as follows:

(1) upon receipt of a Landowner’s completed application, BIA forwards the application to the Executive Office, who then transmits the application to the Law Office and the Department of Land Use Planning and Zoning (LUPZ);

(2) the Law Office acknowledges receipt of the application and requests an appraisal, title status report, and survey from the BIA and the U.S. Department of Interior’s Office of the Special Trustee (OST);

(3) pursuant to the Policy, LUPZ gathers data about the allotment which will form the basis for a Report and Recommendation for Purchase to the Community Council;

(4) upon a Landowner's receipt of appraisal from BIA, the Law Office and LUPZ staff meet with the Landowner to obtain a copy of the appraisal;

(5) LUPZ and Law Office arrange to inform the districts and the Community's Planning and Zoning Commission of the potential land purchase at their respective regularly scheduled meetings; and

(6) the Law Office and LUPZ prepare a Report and Recommendation and sale documents for Natural Resources Standing Committee and the Community Council for its consideration and approval.

B. BIA Delays with Appraisals

The Department of Interior's Office of the Special Trustee (OST), Office of Appraisal Services (OAS) prepares all of the appraisals of the allotments to be considered for purchase by the Community. Initially, the Community was informed by BIA that appraisals would be completed in ninety (90) days. However, it became apparent in late summer 2006 that in several cases, the ninety (90) day period was not being met. On August 25, 2006, LUPZ and Law Office staff met with the BIA Superintendent to discuss how the appraisal process could be expedited.

At that time, the Community was assured by BIA that appraisals would be completed three (3) weeks after receipt of the request from the BIA. To their credit, the BIA also has made some changes in staffing to accommodate the requests they are receiving from Landowners. Despite their good intentions, however, only a handful of Landowners have received appraisals.

As a follow up to the August 25, 2006 meeting, in December 2006, representatives from LUPZ and the Law Office met with Pima Agency, OAS and the Deputy Director, Appraisal Branch, BIA, to discuss utilizing market analyses in lieu of appraisals for purchase of fractionated interests of land only. It was understood at that time that OAS would be hiring a contractor to perform the market analyses, and that the Community would not be receiving

market analyses until after March 2007. However, the Community has not yet received a market analysis in lieu of an appraisal.

The Community's June 2007 review of appraisals received revealed that about 18 landowners received appraisals completed by OAS. The Community's review also indicated that of the 18 landowners that received appraisals, 15 landowners contacted the Community to proceed with possible land purchases. Furthermore, the same review also revealed that the longest and shortest amounts of time from the Community's written request to landowner receipt of appraisal was approximately sixteen (16) and seven (7) months, respectively.

Seven to sixteen months is an inordinately lengthy amount of time to complete appraisals in a rapidly changing market, and the amount of time taken to receive an appraisal is the single activity that takes the most time to complete in the Community's land acquisition process.

C. BIA Miscommunication to Landowners

In June 2007, it came to the Community's attention that Pima Agency was informing allottees that the Community lacked funds to purchase land under the Policy. Pima Agency's misstatements appear to stem from its misunderstanding regarding completed appraisals and their effect, if any, on the Fund and the Community's ability to purchase land under the Policy. Pima Agency requested the Community to provide a resolution stating that "GRIC is interested in purchasing the remaining landowner's interests and that funding is available for further acquisitions." Apparently, Pima Agency's request seemed to imply that the approximate total dollar value of land appraised at that time, \$14 Million Dollars, exceeded the Community's initial appropriation to the Fund, which Pima Agency believed rendered the Community financially incapable of purchasing land under the Policy. Based on this misunderstanding, Pima Agency was not processing the Community's requests for appraisals. For several reasons, Pima Agency's assumptions and conclusions were incorrect, and the Community responded to Pima Agency by letter dated June 25, 2007.

D. BIA Use of Purchase Agreement and Delay of Closing

Prior to the Community's enactment of the Policy, the Community purchased allotted land using a Purchase Agreement to which BIA was a party and signatory. The Purchase Agreement was utilized by the Community, BIA and a landowner in spring 2006 when the Community purchased ten (10) acres. Based on precedent, and after the enactment of the Policy, in January 2007, the Community utilized the same Purchase Agreement when concluding the purchase of twenty (20) acres. Abruptly and without notice, and despite being fully aware in advance that the Community would be purchasing the twenty acres, BIA declared that it could not be a party to the Purchase Agreement. BIA's abrupt change of position was not communicated to nor anticipated by the Community, and resulted in a two (2) month delay in concluding the purchase while the Community and Pima Agency developed a mutually acceptable procedure for concluding future land purchases that did not include BIA as a party to Purchase Agreements.

E. Landowners' Applications for Sale of Land

Until approximately two weeks ago, when the Community received notice from the BIA that a landowner wanted to sell land to the Community, BIA would inform the Community by letter of a landowners' interest to sell, and included a copy of the completed land sale application and an allotment sheet describing all of a landowner's interests. Recently, the Community received only cover letters and allotment sheets, but not landowners' applications. Believing the lack of applications was an oversight, the Community telephoned Pima Agency, requesting the missing applications. Pima Agency informed the Community that BIA would no longer be providing the Community with landowners' applications for sale of land, citing privacy concerns.

Prior to not receiving the applications, the Community was not made aware of BIA's decision to not provide the Community with copies of the applications. While BIA's concerns may have some merit, the landowners' applications are the only documents the Community will have that are completed by the landowners themselves and in which they indicate the allotments or portions thereof that they want to sell to the Community. As a buyer in a negotiated sale, it is

completely reasonable for the Community to have a copy of the landowners' applications to verify exactly what land the landowners have an interest in and what they want to sell. Arguably, by completing an application for sale of their land to the Community, the landowners have provided implied consent to providing the necessary information to the Community. And, if there is personal information contained in the applications that BIA or landowners do not want to be disclosed and that is not necessary to proceed with the sale, such information can be redacted. The Community is preparing a formal request to Pima Agency to provide copies of the landowners' applications.

Proposed Solution: As discussed above, BIA needs to work as a partner with the Community and better understand the Community's long term goals, rather than presenting obstacles to the Community's land acquisition efforts. By spreading inaccurate information about the Community's ability to purchase interest in land, failing to keep the Community informed about landowner purchase applications, and by abruptly making changes in land acquisition policy at BIA, the BIA has impeded rather than assisted the Community's important land acquisition goals. As a specific matter, BIA could assist the Community by facilitating the preparation of market analyses in lieu of appraisals for purchase of fractionated interests in land, which worked well when the Community was an active participant in the ILCA program and would avoid the BIA appraisal delay issue. Unfortunately, the Community has made this request but has yet to receive a market analysis in lieu of an appraisal.

Conclusion

This testimony has attempted to provide the Committee with several examples of areas in which the Community has experienced shifting and overly bureaucratic policies of the BIA that have negatively affected the Community's economic development planning. We believe this story speaks more largely, however, to a breakdown in the trustee's relationship with tribes as BIA moves from helping to facilitate tribal initiatives to instead posing as an obstacle to tribal development objectives. The Community spends more personnel time in interaction with BIA, often confrontational, than it spends with any other entity with which it conducts business. Some proposed immediate solutions have been included above. However, longer term solutions

must include providing tribes a larger and more active role in controlling their land base and providing for governmental approvals in use of tribal lands. We understand that it is no solution to simply complain about our relationship with BIA – that would be too easy. Instead, we look forward to working with Committee staff on a longer-term initiative to develop ideas to address these important issues, including the development of legislation and policies that facilitate the broader goal of sovereignty for tribes that keeps pace with tribal economic development goals and the competing development surrounding tribal lands.

Thank you, distinguished Members of the Committee, and we stand ready to answer any additional questions you may have about this testimony or to supply any additional information for the written record.