

**TESTIMONY OF
RON HIS HORSE IS THUNDER
CHAIRMAN OF THE
STANDING ROCK SIOUX TRIBE
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OCTOBER 4, 2007**

My name is Ron His Horse is Thunder. I am Chairman of the Standing Rock Sioux Tribe of North and South Dakota. I want to thank the Committee for the opportunity to present testimony at this important hearing.

The Standing Rock Sioux Tribe like many Tribes throughout the United States is suffering real and enduring damage from the failure of this Department of the Interior to do what it should do as a matter of course. The record of this hearing will reflect that throughout Indian county leases are not getting approved, Rights of Way are not being granted, land is not being taken into trust, estates are not being probated, and new trust lands are not being proclaimed as reservations. These individual failures represent the Department's inability to exercise the most basic of its trust responsibilities to Tribes and Indian people. This responsibility is most clearly defined in the Indian Reorganization Act. It is the promise of this Act, which serves as the foundation for today's self-determination policy, which is being severally undermined by the backlog and delays that the Committee will hear about today and which will be part of the record for this hearing.

The Indian Reorganization Act ("IRA") was one of the most important pieces of Indian legislation in American history. Based in considerable measure on the findings of the Meriam Report, the IRA altered the basic thrust of the allotment policy that immediately preceded it. Where the allotment policy sought to remove lands from the Indians, and destroy tribal life and institutions, the IRA sought to rebuild the reservations and the tribes, and to provide new opportunities for economic growth and self-government on the reservations.

As the Supreme Court observed in Duro v. Reina, 495 U.S. 676, 691 (1990): "[t]he 60 years preceding the Act [IRA] had witnessed a calculated policy favoring elimination of tribal institutions, sale of tribal lands, and assimilation of Indians as individuals into the dominant culture." Proposed initially by the Roosevelt Administration to change that sorry history, the IRA was personally supported by President Franklin D. Roosevelt as "embod(y)ing the basic and broad principles of the administration for a new standard of

dealing between the Federal Government and its Indian wards.”¹ As the United States Supreme Court observed in Mescalero Apache Tribe v. Jones, 411 U.S. 145, 152 (1973), quoting H.R. Rep. No. 1804, 73rd Cong., 2d Sess. 1 (1934), the IRA was intended “to rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.” The Court has also held that “[t]he overriding purpose of . . . [the IRA] was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.” Morton v. Mancari, 417 U.S. 535, 542 (1974).

During the consideration of this Act, Representative Howard of Nebraska, Chairman of the House Indian Affairs Committee pointed out, a chief cause of the decline suffered by the Indians had been the policy of the General Allotment Act. Accordingly, the chief purpose of the IRA was to eradicate the effect of that Act. To reverse the allotment policy and permit the rebuilding of tribal land holdings, the IRA contains what remains today the principal statute authorizing the Secretary to acquire lands in trust for a tribe or individual Indian, Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. 465.

Through the past six decades, both Republican and Democratic Administrations have used Section 465 to further the purposes of the IRA to benefit Indian tribes and individual Indians. Unfortunately, we have now encountered a Department that for reasons that have yet to be explained to me has determined that it will no longer move forward with the policy of the IRA. A fear held by some in Indian country is that the Department has determined that any action that it is asked to take for the benefit of tribes or Indian people must first be weighed against other concerns unrelated and in some instances completely contrary to the interest of Tribes. I have heard repeatedly that the decisions before the Department must be balanced against other considerations. All too often these “other considerations” prevail and the interests of the tribes remain unfulfilled. This balancing process has paralyzed the Department’s exercise of its trust responsibility .

The balancing makes me ask the following question. Has the Department concluded that the United States has fulfilled its mandate under the IRA and that the Department believes it no longer has an overarching responsibility to improve the status and conditions of Indian country? To be clear, the mandate has not been met at Standing Rock . Nor has it been met on most Reservations. As you well know, the health and social conditions and needs on my Reservation and many throughout Indian country are

¹ Letter to Honorable Burton K. Wheeler, April 28, 1934, Sen. Rep. No. 1080, 73rd Cong. 2d Sess. 3 (1934).

staggering. If the Department is failing Indian tribes with regard to trust acquisitions, probate and land appraisals—work it has been doing for over 150 years, how can Tribes trust the Department to work with us to solve the problems that tribes face in the 21st Century. I will address the two primary topics of today’s hearing.

1. LAND INTO TRUST

The most basic promise of land restoration has not been fulfilled by the IRA. As a result of the allotment policy, at Standing Rock we lost more than one million acres of land to non-Indian allotment. Today, the Tribe retains trust title to only 300,000 acres of our original 2.3 million acre reservation. Our tribal members hold approximately another 500,000 acres of land in trust allotments. The remainder of our reservation is held in fee.

In the last twenty five years, no lands at Standing Rock have been taken into trust for the benefit of the Tribe. Today at Standing Rock we have ten applications for land to be taken into trust for the benefit of the Tribe, totaling just over 19,000 acres of land. Some of these applications have been pending since 1992. These applications concern lands that were once reserved for the Tribe’s exclusive use. Most of this land is intended to enhance the Tribe’s agricultural and livestock programs. There are no environmental concerns and no substantive objections from any party. These are the exact type of the lands that under the Indian Reorganization Act, the Department should be returning to trust as a matter of regular course. Yet, it has not happened.

2. PROBATE

Another fundamental area where the Department’s inexplicable delays cause both economic and emotional hardship is in the area of probate. How can Tribes and families properly manage their realty if it is stuck in prolonged probate and sitting idle?

While the United States has been probating Indian trust estates for many years, it seems that with each passing year and with each new Department initiative, the process gets worse. Indian families, who wish nothing more than to bring closure to the death of their loved one, do not get closure. What they get are delays, excuses, and on-going frustration. Allotted Tribal lands, that could be leased out for grazing or agriculture, or other productive uses, sit idle, and generate no income to the Indian family.

The Bureau’s probate regulations require Federal officials to perform four tasks: 1) find out about a Native person’s death; 2) prepare a probate package; 3) refer the completed package to the Office of Hearing and Appeals; and 4) require a “deciding

official” to determine how to distribute the property and/or funds deposited in an Individual Indian Money account and make the distribution. 25 CFR Part 15.4.

Sounds pretty straight forward. In reality, it is a nightmare. At Standing Rock, we are informed by Bureau officials that there is a backlog of 203 probate cases awaiting resolution. In the Great Plains Region, we are told the probate backlog stands at 1,399 (one thousand three hundred ninety-nine). Standing Rock Agency officials have informed our Tribe that the Office of Hearing and Appeals does not want to receive any more probate applications because of their current backlog. Tribal officials have stated that there are an additional 100 probate cases to add to the 203.

What I do not understand is the lack of notice to the Tribal family. Families wait years for resolution, with no certainty that anyone at the Bureau is actively working on the probate package and referring it to OHA, or that an OHA deciding official is actively reviewing the file.

The Secretary of the Interior’s duties are to probate trust or restricted property held in the estate of an Indian decedent. I hear so much about the Federal government’s trust responsibility to the Indian people. But as Chairman, I so seldom see it practiced.

To make matters worse, Bureau officials announced several years ago that their offices could no longer be the repository for the wills of Tribal members and that individuals would have to make other arrangements for the safekeeping of their wills. One of the required elements of the probate package which the regulations require to be provided to the Bureau includes “all originals or copies of wills and codicils, and any revocations.” 25 CFR 15.104(8). The trustee’s action has the effect of making their own job more difficult by refusing to be the repository for the decedent’s last will and testament.

The Great Plains Tribal Chairman’s Association learned last week from Bureau officials at the Rapid City OHA office that they have been instructed to close that facility and move to Billings, Montana. Billings, Montana is about 430 miles from our Administration offices at Fort Yates. The Tribal Chairman’s Association passed a resolution objecting to the move, a decision made without Tribal consultation. We fear that the Department does not understand that the changes it makes to achieve some perceived notion of efficiency and streamlining, in fact achieve the opposite result of unnecessary delays and added costs to Indian people and the Tribe.

Instead of closing offices and moving staff, the Bureau should devote its resources to help Tribal families establish life estates and family trusts that avoid the need for

probate. The Bureau should assist Indians to purchase fractionated interests so that trust or allotted lands are put to use and generate income for Indian families. Rather than helping to solve chronic problems that plague our reservations through innovative and creative solutions, the Bureau perpetuates problems and contributes to the common view in Indian country that the system is broken , and the common lament that no one should bother trying to fix it, because no one really cares.

I would like to thank the Committee again for the opportunity to testify and would be happy to answer any questions that you may have.