

Testimony
of
Michael Black
Acting Assistant Secretary – Indian Affairs
United States Department of the Interior
Before the
Senate Committee on Indian Affairs
On
“High Risk, No Reward:
GAO’s High Risk List for Indian Programs”
May 17, 2017

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Michael Black and I am the Acting Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to present testimony on behalf of the Department of the Interior (Department or DOI) regarding Indian Affairs’ role in the development of Indian energy and its recent high risk designation in the Government Accountability Office (GAO) High Risk Report (GAO-17-317 High Risk Series).

The President and the Secretary have made a clear commitment to advancing America’s energy independence through responsible resource development. Tribes play a critical role in this conversation, as energy development ranging from clean coal to oil and gas to wind creates good-paying jobs and bolsters tribal and local economies. In many instances, the development of energy resources offers Tribes opportunities that otherwise would not exist, particularly in rural areas.

Strong tribal economies strengthen the exercise of tribal sovereignty, and the Department continues to promote tribal energy development. However, as previous GAO reports have explained, there are many opportunities for us to improve our support for tribal energy development. The Department agrees with GAO’s recommendations and we are dedicated to implementing widespread reform to help foster energy independence among Tribes who are interested in developing their resources.

As the High Risk report notes, GAO has made fourteen recommendations to the Bureau of Indian Affairs (BIA), via three reports, all of which currently remain open. As the former Director of BIA and current Acting Assistant Secretary, I know these issues well and acknowledge that we have a significant amount of work to do. My testimony today will address GAO’s recommendations and highlight our current progress towards implementation.

GAO 15-502

Recommendation 1: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should take steps to complete its GIS mapping module in TAAMS.

Indian Affairs agrees that promoting energy development in Indian Country requires timely verification of ownership and identification of resources available for development. The Department understands that GIS mapping of Indian lands is exceedingly important and we are working toward utilizing a GIS mapping tool for Indian lands and developing a GIS policy. However, the Trust Asset and Accounting Management System (TAAMS) was not designed as a geospatial mapping system, but simply to reflect legal descriptions as they appear on documents recorded as required by federal law.

Thus, the BIA is not building out the GIS mapping module in TAAMS. Instead, the BIA will utilize commercially available, off-the-shelf mapping technology to integrate data viewing and map creation capabilities into TAAMS at the desktop. The GIS Map Viewer will be based upon verified legal land descriptions and ownership data available in TAAMS with base reference data for mapping. Recently, the GIS Map Viewer was successfully tested with TAAMS and is now being reviewed for compliance with DOI and Indian Affairs Information Technology (IAIT) electronic security policies and procedures for TAAMS. IAIT Change Advisory Board (CAB) and Architectural Review Committee (ARC) are expected to grant a preliminary Authority to Operate (ATO) within 180 days of review of the GIS Map Viewer security application for TAAMS. The GIS Map Viewer is scheduled for deployment by September 1, 2017.

Recommendation 2: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should work with BLM to identify cadastral survey needs.

A survey is an important step in developing a full inventory of trust resources, yet in more than a century since the establishment of Indian reservations, the federal government has not yet fully surveyed all Indian reservation lands. As in years past, the BIA and the BLM, in a coordinated and focused effort, have prepared a Reimbursable Service Agreement between the two agencies to identify and deliver the much needed survey-related products and services. Cadastral survey inventories are being evaluated and FY17 survey requests have been approved for funding and completion by BLM.

Recommendation 3: To improve the efficiency and transparency of its review process, BIA should develop a documented process to track its review and response times.

The GAO recommended the BIA develop a process to track BIA review and response times. A group of BIA subject matter experts in oil and gas processing have been working to modify TAAMS, incorporating the key identifiers and data fields needed to track and monitor review and response times for oil and gas leases and agreements. BIA is also in the process of evaluating and reviewing the current realty tracking system and TAAMS in order to improve efficiencies and timeliness in processing workloads. Due to the fact that modifications to data systems must be reviewed by multiple entities within the Department, a request for an extension of time will be submitted to the GAO within this quarter.

Recommendation 4: To improve the efficiency and transparency of its review process, BIA should enhance data collection efforts to ensure it has data needed to track its review and

response times.

BIA is in the process of evaluating the data collection efforts used by various systems. Efforts are underway with subject matter experts to analyze and develop recommendations for improving data collection, tracking and business processes.

Recommendation 5: Provide additional energy development-specific guidance on provisions of Tribal Energy Resource Agreement (TERA) regulations that tribes have identified to Interior as unclear.

The Department is working to implement GAO's recommendation that DOI provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to the Department as unclear. The Office of Indian Energy and Economic Development (IEED) continues to perform training and technical assistance on the TERA regulations, and will issue guidance on those provisions of TERA that have been identified as unclear.

The Department believes that clarity can be best achieved by amending the Indian Minerals Development Act of 1982 to insert tribal self-determination language similar to that found in the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012. The HEARTH Act permits tribes to lease surface trust lands for renewable energy purposes absent approval by the Department by implementing their own leasing regulations. In prior testimony to this Committee, the Department recommended Congress consider a HEARTH-like fix in the conventional energy arena by amending the law to match the HEARTH Act provisions. We would be willing to work with the members of this committee on such an amendment.

GAO 16-553

Recommendation 6: Establish required time frames for the review and approval of Indian Communitization Agreements (CAs) to ensure a more timely CA process.

The Department is working to ensure CA processes are timely. A National Policy Memorandum has been developed that establishes time frames for review and approval of Indian CAs. Such time frames will also be incorporated into the BIA Fluid Mineral Estate Procedural Handbook and the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures. The Memorandum is currently undergoing review and approval within the Department. On April 27, 2017, the Department received notice that an extension was granted by GAO to extend the target date to the end of FY18.

Recommendation 7: Develop a systematic mechanism for tracking Indian CAs through the review and approval process to determine, among other things, whether the revised CA process meets newly established time frames.

The BIA is developing a systematic mechanism to track Indian CAs through the review and approval process. As part of this effort, a group of BIA subject matter experts who meet

regularly are working to implement identified enhancements to TAAMS. Until TAAMS can be modified to incorporate the key identifiers and data fields, the BIA is utilizing a centralized tracking spreadsheet on the Google platform. BIA leads the development and deployment of this tracking spreadsheet in consultation and coordination with BLM. We have received an extension from GAO to complete this recommendation by the end of FY18.

Recommendation 8: Assess whether the revised CA process is achieving its objective to improve the timeliness of the review and approval of Indian CAs, and if not, make changes as appropriate.

BIA and BLM will continue to use the tracking spreadsheet mentioned above, and, upon completion, the enhanced TAAMS, to monitor and assess the results of the efforts to streamline the Indian CA review and approval process. The bureaus will coordinate to establish a process for review of the collected data, which will assist in identifying and implementing any necessary process modifications.

GAO 17-43

Recommendation 9: Include the other regulatory agencies in the Service Center, such as Fish and Wildlife Services, the Environmental Protection Agency, and the Army Corps of Engineers, so that the Service Center can act as a single point of contact or a lead agency to coordinate and navigate the regulatory process.

The Indian Energy Service Center (IESC) is working to implement Memoranda of Understanding (MOU) with appropriate Department bureaus and other Federal agencies involved in the development of Indian energy and mineral resources and to define roles and responsibilities regarding the development of those resources on trust lands. MOUs are being developed with the Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), as well as IEED and Department of Energy (DOE).

The BIA, through the Indian Energy Minerals Steering Committee (IEMSC), has also established Federal Partners Groups, where needed, which include: BIA, BLM, Office of Natural Resource Revenue (ONRR), Corps, FWS, and EPA. These groups provide field knowledge on energy and mineral issues and serve to facilitate and focus the single point of contact desired by the respective parties regarding the processing of energy development for each region.

Currently, Federal Partner Groups are being established for the Navajo Region and the Rocky Mountain Region. Federal Partner Groups for the Great Plains Region, the Eastern Oklahoma/Southern Plains Regions, and the Western Region are currently meeting on a regular basis.

Recommendation 10: Direct the Bureau of Indian Affairs to establish formal agreements with IEED and DOE that identify, at a minimum, the advisory or support role of each office.

BIA recognizes that in addition to the identification of potential energy resources, there must be organized coordination between agencies to fully develop and/or protect Indian energy and mineral resources.

In an effort to improve communication between the two offices, an MOU was recently signed between IEED and DOE outlining a partnership going forward. Currently, the IESC is reviewing this MOU with the intent of entering into the existing agreement. The IESC expects to meet with IEED and DOE in the near future to help finalize the agreement.

Recommendation 11: Direct Bureau of Indian Affairs to establish a documented process for seeking and obtaining input from key stakeholders, such as BIA employees, on the Service Center activities.

Currently, the IESC is developing a process that allows key agencies to provide input and requests for service received on behalf of tribes from the IESC. The process will also include guidance on the prioritization of task orders. The Executive Management Group of the IESC, comprised of the directors of the BIA, BLM, ONRR, and Office of the Special Trustee for American Indians (OST), are engaged in this work. The IESC is currently drafting intake forms, which will be distributed to obtain input regularly from stakeholders.

Recommendation 12: Direct the Bureau of Indian Affairs to document the rationale for key decisions related to the establishment of the Service Center, such as alternatives and tribal requests that were considered.

The development of the IESC was the result of a concept paper produced by a multi-agency team formed by the IEMSC. The multi-agency team held a tribal listening session, received written comments, and conducted conference calls in an effort to gather input from relevant stakeholders. The final version of the concept paper also included an organization chart which set forth the IESC chain-of-command. The IEMSC accepted and approved the concept paper as presented by the multi-agency team. At this point, the BIA believes this recommendation is complete.

Recommendation 13: Direct the Bureau of Indian Affairs to incorporate effective workforce planning standards by assessing critical skills and competencies needed to fulfill BIA's responsibilities related to energy development and by identifying potential gaps.

The BIA is in the process of identifying and implementing a workforce plan regarding positions associated with the development of Indian energy and minerals. First, the IESC will collect data directly from BIA, BLM, ONRR, and OST employees in an effort to identify workload and necessary technical competencies. Then, the IESC will work with partner bureaus to assess skills and competencies needed for energy and mineral workforce standards. This recommendation is expected to be completed by the end of 2017.

Recommendation 14: Direct the Bureau of Indian Affairs to establish a documented process for assessing BIA's workforce composition at agency offices taking into account

BIA’s mission, goals, and tribal priorities.

The BIA plans to assess the BIA Indian energy and mineral workforce composition using the same process as described in Recommendation 13. This includes collecting data directly from BIA, BLM, ONRR, and OST employees

Conclusion

Thank you for the opportunity to present testimony today. The Department is committed to upholding the trust responsibility to tribes and implementing GAO’s recommendations. I would be glad to answer any questions the Committee may have.