

**STATEMENT OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
FIELD OVERSIGHT HEARING
ON
“STRENGTHENING SELF-SUFFICIENCY: OVERCOMING BARRIERS TO ECONOMIC
DEVELOPMENT IN NATIVE COMMUNITIES”**

AUGUST 17, 2011

Good morning, Mr. Chairman and Members of the Committee. It is a pleasure to be here today to present the Department of the Interior’s statement on “Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities.” My name is Michael Smith and I am the Deputy Bureau Director for Field Operations in the Bureau of Indian Affairs (BIA) within the Department of the Interior (Department).

The Bureau of Indian Affairs (BIA) provides services directly or through contracts, grants, or compacts to a service population of about 1.7 million American Indians and Alaska Natives who are enrolled members of 565 Federally recognized Tribes living on or near Indian reservations in the 48 contiguous United States and Alaska. In addition, the BIA is responsible for the administration and management of approximately 56 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Building strong, prosperous Native American economies is a priority for this Administration.

Earlier this month, the White House’s Domestic Policy Council and the National Economic Council convened a meeting with Native American economic development experts for a White House Native American Business Leaders Roundtable. This Roundtable is part of the White House Rural Council’s ongoing engagement with leaders from across Rural America, and gave Administration officials an opportunity to hear from Native American business leaders and policy experts about ways we can work together to improve economic conditions and create jobs in tribal communities.

While each tribal economy is unique, there are a number of common factors that have inhibited economic development in Indian Country. Primary roadblocks include: (1) lack of collateral with which tribes and reservation businesses can obtain capital; (2) lack of a business development environment; (3) lack of physical and legal infrastructure; (4) difficulty in developing natural resources due to multiple governments having regulatory and taxing jurisdiction over development; (5) lack of educational and training opportunities to develop a skilled work force; and (6) lack of access to modern technology. Many of these roadblocks are

products of the history of federal-state-tribal relations, and have tribe-specific nuances that must be addressed on a tribe-by-tribe basis. Therefore, Indian tribes must be the driving force behind federal policies targeted toward job creation and economic development in Indian Country, which is consistent with the policy of Indian self-determination. Nonetheless, the Department does support a couple of pieces of legislation that would assist with spurring economic development Indian Country. In addition, the Department has also recently identified the following strategies and actions that could be implemented to enhance business and infrastructure development in Indian Country.

Recently, the United States Government Accountability Office (GAO) stated that the uncertainty in accruing land in trust for tribes, as a result of the United States Supreme Court decision in *Carciere v. Salazar*, 129 S. Ct. 1058 (2009), is the primary barrier to economic development in Indian Country.¹ Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety and welfare of the Tribal Nations. The Department strongly supports Congress's effort to address the *Carciere* decision. In addition, President Obama's FY 2012 budget proposal included *Carciere* fix language signaling his strong support for a legislative solution to resolve this issue.

Since the *Carciere* decision, the Department must examine whether each tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under federal jurisdiction" in 1934. This analysis is done on a tribe-by-tribe basis; it is time-consuming and costly for tribes, even for those tribes whose jurisdictional status is unquestioned. It requires extensive legal and historical research and analysis and has engendered new litigation about tribal status and Secretarial authority. Overall, it has made the Department's consideration of fee-to-trust applications more complex.

The Department believes that legislation is the best means to address the issues arising from the *Carciere* decision, and to reaffirm the Secretary's authority to secure tribal homelands for all federally recognized tribes under the Indian Reorganization Act. A clear congressional reaffirmation will prevent costly litigation and lengthy delays for both the Department and the tribes to which the United States owes a trust responsibility.

The Department also recently testified before this Committee in strong support of S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011, which would restore tribal authority to govern leasing on tribal lands, for those tribes that wish to exercise that authority. Under this legislation, tribes would submit their own leasing regulations to the Secretary for approval, and then process leases under tribal law without prior express approval from the Secretary of the Interior. This bill has the potential to significantly reduce the time it takes to approve leases for homes, small businesses, and renewable energy.

The Department is also working internally on ways to spur economic development in Indian Country. First, the Department recognizes that Indian tribes must be able to determine how their

¹ See, Testimony of Anu K. Mittal, Director, Natural Resources and Environment, *Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands*, Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, U.S. House of Representatives (April 7, 2011).

homelands will be used. Thus, the Department is revising 25 C.F.R. Part 162, the regulations governing leasing on Indian lands. Once completed, this effort will mark the most significant reform to Indian land leasing in 50 years. The Department's revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on tribal lands. The Department conducted three tribal consultation sessions on this initiative in April, and has reviewed and considered all tribal comments on the draft leasing regulations. The Department expects to proceed to a formal Notice of Proposed Rulemaking in the near future. We intend to conduct further consultation at that time, in addition to receiving public comments on the proposed regulations. As it stands, our plan is to complete the rulemaking for these regulations in early 2012.

Second, for the United States to adequately identify and focus on unemployment in Indian country, we must first collect reliable data that will allow us to track progress over time. The Assistant Secretary, Indian Affairs, and specifically its Office of Indian Energy and Economic Development (IEED) is charged with stimulating economies, fostering job creation, and improving the quality of life in Native American and Alaska Native communities. Adequately gauging the impact of IEED's economic development strategies, programs, and initiatives is difficult as there is no reliable baseline index of unemployment and productivity in Indian Country. The Departments of the Interior, Commerce, Agriculture and Labor all have programs that target economic development in Indian Country. Several agencies estimate conditions in Indian Country, but no Department has specifically targeted Indian Country to produce reliable and accurate economic data. Therefore, Indian Affairs has recently hired an economist who has begun to work with IEED on collecting better economic data to support various programs.

In addition, in July of this year, Larry Echo Hawk, the Assistant Secretary - Indian Affairs, signed a Memorandum of Understanding (MOU) with Harvard University's Project on American Indian Economic Development whereby the Department and Harvard will collaborate on promoting tribal economic development through research, outreach and leadership education. The Department and the Harvard Project have identified areas of possible collaboration:

- Research efforts that focus on improving economic opportunities in tribal communities, that facilitate tribal development of the legal and political infrastructure that will promote economic development in tribal communities, and that address disparities in economic indicators.
- The identification and development of outreach efforts having high potential impact on economic development initiatives in tribal communities, the capacity of those communities to promote economic development, opportunities for productive research and curriculum programs on economic development and tribal government management.
- Expanded outreach and recruitment opportunities for graduate education at Harvard University and its allied organizations in leadership, management and other professional fields relevant to Indian Country economic development policy, as well as the orientation and training of the Department and Indian Affairs managers to foster a climate of economic growth in tribal communities.

Third, the Department has been engaging tribal governments in our national energy priorities, including renewable energy development on tribal lands. We know that Tribal lands hold a great capacity for solar, wind and geothermal projects, and we are committed to helping Indian tribes unlock that potential. IEED has identified reservations with renewable energy potential.

The IEED addresses energy (conventional and renewable) and mineral potential in Indian Country as part of its mission to fulfill the Administration's New Energy Frontier Initiative. IEED is currently working on more than 50 projects on approximately 35 reservations. This, however, is barely tapping the potential that exists in Indian Country for energy development. A tremendous need exists to quantify these potentials on individual reservations to gain a better understanding of how to best develop these resources in accordance with Indian tribes.

This concludes my statement. I am happy to answer any questions the Committee may have.