

**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
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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.