

STATEMENT
of
M. SHARON BLACKWELL
DEPUTY COMMISSIONER OF INDIAN AFFAIRS
before the
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
March 21, 2001

INTRODUCTION

Good morning, Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to be here to discuss the Bureau of Indian Affairs' (BIA) work on reform of the Indian trust assets management and to affirm the BIA's continuing commitment to correct where needed, and to strengthen throughout, the administrative processes for fulfillment of this Nation's trust responsibilities to Indian Tribes, Indian individuals and Alaska Natives.

Last October the BIA celebrated its 175th anniversary with a look back at the BIA's unique role in the history of federal Indian policy. As many of us know full well, that history contains some dark chapters. Among those is the decades old neglect of the task of formulating uniform and consistent standards to govern our management of Indian trust lands and the revenues that are generated through that management. It is not surprising that the United States now finds itself engaged in litigation brought by Indian landowners and account holders which challenges old management practices and procedures. The recent decision of the Federal Circuit Court of Appeals in *Cobell v. Norton* described in great detail the historical shifts in Indian policy and the unintended results which sometimes worked at odds with prudent management prerogatives. Suffice it to say that the legacy left by the failed allotment policy of the 1800s was long in creation and will take not only careful planning and strong partnerships between all branches of the federal government to correct, but will also take time to gain the confidence of the Indians whom we serve.

With the support of this Committee, the BIA, along with other agencies in the Department of the Interior, has begun trust reform which literally touches every aspect of the work we do in Indian affairs. We believe that we have made substantial progress in a number of areas. We readily acknowledge that there remains much to be done.

I would first like to advise the Committee that the \$32 million increase that the BIA received for trust work for FY 2001 has been distributed to the 12 BIA Regional Offices and on to the 87 field installations in Indian Country that carry out the day to day management and administration of Indian trust and restricted lands. The distribution of this funding was made based upon such factors as caseload, number of trust and restricted tracts, and number of fractionated owners in each Region. The factors were designed to ensure that these funds were placed in those programs with the greatest need to support the Department's trust reform initiative. The funds are being used to hire additional staff in the specialized areas of real estate services, appraisals and land titles. These new hires will enhance the surface leasing program that annually generates over \$100 million in income to Indians who own trust and restricted lands. The goals are not complex, but long overdue: to ensure that Indian leases are timely processed by professional real estate services personnel, rental valuations are prepared by the qualified and certified appraisers, title and ownership records maintained by the BIA and Tribal contractors are up-to-date and accurate, and, that rentals and other compensation due the owners are correctly computed and timely paid.

The reform is challenging. Old policies and procedures grew in each of the Regions to meet differing Tribal specific statutory requirements for allottee and Tribal resources. For an example, while the Osage Reservation in Oklahoma was divided into allotments in 1906, the oil and gas reserves underlying the Reservation were held intact by the United States as a mineral reservation. Interests in the mineral reserve are referred to as "headright interests"; the BIA is charged with maintaining and distributing the quarterly mineral income to thousands of headright holders, who claim their interest through one of the original 2297 Osage allottees. Departmental responsibilities in this area includes the examination and approval of Osage wills, conducting administrative proceedings after the death of an Osage testator when an approved will is challenged, monitoring the eventual probate of the will in state court, in addition to exercising superintendence over the surface allotted lands. There are hundreds of such examples of unique statutory and regulatory requirements that guide the work of the BIA. Transposing this work, which in some areas has been done with pen and ink on index cards for decades, into national uniform systems and operational practices is exacting and challenging. It is not unexpected that some managers become frustrated.

While there remains much to be done to correct deficiencies, much has been done. Some of the more significant accomplishments include the following:

- Last year after extensive consultation with the Indian Tribes and legal scholars, the Department issued a historic Secretarial Order that identifies 13 principles which embody what the courts and the Congress has determined to be the parameters of the trust responsibility. Departmental agencies and bureaus that carry out trust functions are mandated to use these principles to examine their policies, programs, and day-to-day operations, and to take remedial actions where necessary. This will be published in the Departmental Manual.

- The BIA regulations on agricultural leasing, grazing, management of Tribal and individual trust funds prior to and after processing by the Office of the Special Trustee for American Indians (OST), Office of Trust Fund Management (OTFM) and an expanded probate processing program, were published as final regulations on January 22, 2001.

- The BIA has worked with OTFM to draft a handbook that identifies the respective responsibilities, duties and documentation requirements between OTFM and the BIA field offices for the processing of funds derived from trust assets.

- As mentioned by the Special Trustee, the “land titles” module of the Trust Asset Accounting and Management System (TAAMS) which contains current ownership records based upon common law notions of legal root of title, has been deployed at four of the BIA’s 12 Regions.

- We are near the testing stage of the design of “leasing module” of TAAMS. This module will permit thousands of the various kinds of leases and permits on the 56 million of acres of trust and restricted Indian resources to be nationally documented, uniformly tracked and monitored. Following successful testing, an executive management decision expected in early this summer, will determine future deployment of the leasing module to the pilot Region and onto the remaining BIA locations. Building on lessons learned from industry, the design team is composed of BIA “users” from the various program disciplines of forestry, agriculture, range, housing, minerals and commercial leasing. This team is working alongside the system’s software design contractor in Dallas to complete this module.

BIA PROJECTS

The BIA is responsible for five projects under the Trust Management Improvement Plan: implementation of TAAMS, clean-up of land records data, probate, appraisals, and policies and procedures, as well as the related land consolidation project. The size and scope of this Departmental undertaking is unprecedented. I will briefly highlight some of the issues that we face in our efforts to meet the requirements in the High Level Implementation Plan (HLIP) and more importantly, the Federal Government's fundamental trust responsibility to Indian Tribes and individuals and Alaska Natives.

TAAMS Implementation and Data Clean-Up

The BIA continues to meet milestones leading to the successful implementation of TAAMS. Decades of under-investment in information technology means, as mentioned earlier, that ownership and leasing data at some agencies exists only in hard copy while others have developed desktop computer-based applications or have used parts of the outdated systems, also referred to as legacy systems. Conversion of existing data to TAAMS requires a unique approach from Region to Region and often even from agency to agency. As we have learned more we have modified our TAAMS implementation approach along the way to guarantee that it is done right the first time. I am mindful that there are skeptics, however, I remain confident that when completed, TAAMS will be a comprehensive, user-designed, and thus, a user-friendly system for modernizing trust management activities in the Department. We are on schedule to meet our deadline of May 31, 2001, for completion of the leasing software design. After the design and system testing is complete, our contractor will analyze the user testing results and produce a report, which will be the basis for an executive level decision to deploy the leasing portion of the realty module to our test site in Billings, Montana.

Once the leasing module is implemented, future work includes the design, testing and implementation of a conveyance module which will track the ultimate disposition of trust and restricted land either by gift, bargain and sale, condemnation, or voluntary removal of restricted or trust status. Additional tasks will address the integration of the probate and appraisals modules.

Probate

The Department of the Interior's responsibility to probate the estates of deceased Indians who own trust assets was first addressed by the Congress almost 100 years ago. Over the last century, four main components of this process have evolved: (1) BIA agency staff prepare a probate package that includes an inventory of the trust assets of the decedent, known relatives of the decedent, potential heirs or devisees, and provides a will, if any exists; (2) an Administrative Law Judge (ALJ) from the Office of Hearings and Appeals (OHA), or in summary administrative proceedings, the Agency superintendent or attorney decision-maker, determines the heirs or approves the will; (3) the BIA records the new ownership interests in the title plant; and (4) the OTFM distributes trust funds to the heirs or devisees. Over the years, significant backlogs have accumulated in each of these offices which affect some 15,000 estates.

Progress has been made on several fronts for the probate subproject. The BIA and OHA probate activities have been combined under joint OHA/BIA management, a full-time project team is on board, and both BIA and OHA hired additional staff to prepare and decide probates. More than 200 staff attended training and BIA is sponsoring additional training this month to familiarize staff with the revised probate regulations. Regulatory changes will increase the number of cases that can be decided in-house so that the OHA judges can concentrate on the cases where there are factual disputes. A pilot project is ongoing in the Western Region headquartered in Phoenix for processing probate packages. A national roll-out plan is under development. We are also in the process of hiring a contractor to post ownership information in the title plants to address the backlog in posting and recording.

The existing OHA case tracking system is being modified to include BIA case work. A team comprised of experienced staff from BIA, OHA, and TAAMS contractors are putting together the system requirements for the probate module for TAAMS.

In 1997, the United States Supreme Court found in *Youpee v. Babbitt* that the escheat provision of the Indian Land Consolidation Act was unconstitutional. The practical effect of the decision is that the BIA, OHA, and OTFM must redistribute the 178,000 fractionated escheated interests from the Tribes. In FY 2000, we completed a pilot project at the Pawnee Agency which monitored the time and cost to amend title records to reflect the new owners of the escheated interests. The data is being examined to determine the BIA costs for this work. Phase II of the Pawnee Agency pilot will study OTFM's time and cost to prepare journal vouchers and distribute

income that accrued to Tribal accounts prior to the holding in *Youpee*. We have targeted July 2001 to complete development and begin implementation of the BIA's plans to redistribute the *Youpee* interests nationwide.

Appraisals

Only with limited exceptions, DOI is required to conduct appraisals prior to approving any lease or sale of restricted or trust land. Last year, BIA produced almost 26,000 appraisal reports. At the recommendation of the Special Trustee we are evaluating the realignment of the BIA appraising function into an independent branch within the Office of Trust Responsibilities. We will consult with Indian Tribes this spring and following results of the consultation and of workload data, we may submit a reorganization proposal for the Committee's consideration. We will keep you informed of our efforts.

Policies and Procedures

In August 1999, responsibility for the development of comprehensive trust policies and procedures was transferred from OST to the BIA. In January, 2001, the BIA published the first set of revised regulations governing agricultural leasing, grazing, probate, and supervision of funds held in trust for individual Indians. Following promulgation of the first tier regulations, a second tier of proposed regulations that includes commercial and mineral leasing will be examined. Additionally, based on comments received during Tribal consultations and the public comment period, we will re-propose certain provisions governing adult Individual Indian Monies (IIM) accounts and the probate regulations.

At the end of this month, BIA will submit a report to the Department's Trust Management Improvement Council that will provide an overview of the work remaining to be done to update Indian Affairs' policies and procedures. Many of our regulations and much of our policy guidance and handbooks are 30-50 years old. To help us identify the order in which the work will be undertaken, we sent a survey to all Indian Tribes and to our field staff asking that they identify priorities within some 80 different areas. We will assist other Departmental bureaus to update their policies and procedures that impact trust services. Individual bureaus will address bureau-specific policies and procedures while the BIA will coordinate policy development on crosscutting issues.

Further, the BIA will identify changes that need to be made in existing laws. For example, under the law, many Indian adults are considered incapable of managing their affairs unless they have received a “certificate of competency” from a BIA superintendent.

Indian Land Consolidation

One of the most important aspects of trust reform is taking place outside of the overall plan. Thanks to the support of the Committee, we are in the third year of the Indian Land Consolidation project. The recent amendments to the *Indian Land Consolidation Act Amendments of 2000* by the Congress also eases the burden on the day to day activities of the BIA and will result in more timely delivery of trust services to Indian landowners. Through this project, BIA pays willing sellers for their interests in restricted lands and restores the land to Tribal ownership. This represents the first serious effort of the Federal Government to reverse the harsh effects of the allotment era. With its continuation and expansion, this will help to halt the geometric progression in the number of owners of parcels of allotted lands. The Midwest Region continues to be the primary acquisition site for the land program. To date, 1,788 individuals have sold 29,236 ownership interests that allowed us to close 310 IIM accounts. More than 90 percent of the interests purchased are those of 2 percent or less of the total undivided interest in a parcel. In FY 2001, the BIA plans to continue these efforts with reservations in its Midwest Region and consider expanding it to reservations in another Region.

INSTITUTIONALIZING TRUST REFORM

Mr. Chairman, in addition to the ten remaining projects in the HLIP, the Department also has the responsibility of institutionalizing trust reforms and ensuring that the problems do not reoccur. To remedy one of the four breaches of trust identified by the District Court in the December, 1999, decision in the *Cobell* litigation, we are in the process of conducting a thorough analysis of our staffing requirements for all aspects of delivery of trust services, including the Tribes that manage trust programs. Other trust-related services include: enforcing the terms of leases and taking actions against trespassers, which covers over 100,000 surface leases, in addition to timber sales, grazing permits, and rights of way; courts and social workers who oversee supervised trust accounts. Also, ensuring that Indian Tribes meet the same standards that are placed on the Federal government as trustee will necessitate an assessment of Tribal capacity prior to entering into any contract, as well as conducting on-going reviews of Tribal trust management.

TRIBAL-FEDERAL RELATIONS

The obligation to conduct meaningful consultation with American Indian Tribes and Alaska Natives remains a priority for the BIA. For the last 25 years, the BIA has been moving farther and farther from direct intervention in Tribal affairs. Through the *Indian Self-Determination Act*, Congress has authorized Indian Tribes and Alaska Natives to redesign programs, to re-prioritize program funding, and to develop their own operating standards. Tribes determine staffing levels and required staff competencies. By law, reporting from most Tribes is limited to an annual financial audit and a brief program narrative. However, the *Indian Self-Determination Act* also provides that nothing in the Act shall serve to reduce the Secretary's trust responsibility. That means that we are equally responsible for Tribal actions or inaction in the delivery of trust services as we are for our own. We will do our best to work with Indian Tribes to reach consensus on how we assure that both the BIA and the Tribes meet the standards required of a trustee. Implications from the ongoing *Cobell* case will also play a role in these discussions, especially in records management.

The published final regulations state that trust records are Federal records and are subject to the provisions of the Privacy Act. We must ensure that those with access to the records, both BIA and Tribal, meet the federal standards required of those who hold sensitive positions.

CONCLUSION

In the next weeks, we will be sending you the President's budget request for FY 2002 that will continue the efforts for trust reform.

This concludes my opening statement, Mr. Chairman. I look forward to working with you and the Committee and thank you for the assistance it has provided on behalf of trust reform. I will be glad to respond to any questions from the Subcommittee at this time on trust reform.