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REGULATORY BARRIERS TO AMERICAN INDIAN JOB CREATION

HEARING

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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REGULATORY BARRIERS TO AMERICAN INDIAN JOB CREATION

THURSDAY, APRIL 7, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:40 p.m., in room 2154, Rayburn House Office Building, Hon. James Lankford (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Lankford, and Labrador.

Also present: Representative Issa.

Staff present: Ali Ahmad, deputy press secretary; Molly Boyl, parliamentarian; Joseph A. Brazauskas, counsel; Sharon Casey, senior assistant clerk; Christopher Hixon, deputy chief counsel, oversight; Justin LoFranco, press assistant; Kristina M. Moore, senior counsel; Adam Miles, minority professional staff member; Leah Perry, minority chief investigative counsel; and Brian Quinn, minority counsel.

Mr. LANKFORD. The committee will come to order.

We do apologize for running a little bit behind. As you know well, we have some votes being called; and we are very confident to have to be able to take a short recess here in a moment and do some other votes.

Let me do a quick statement here, the oversight committee mission statement. This is Regulatory Barriers to Indian American Job Creation. So I want to read this statement quickly.

We exist to secure two fundamental principals. First, Americans have a right to know that the money Washington takes from them is well spent; and, second, Americans deserve an efficient, effective government that works for them.

Our duty in the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to the taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

I will make a quick opening statement, just to be able to set up what we are trying to accomplish today.

The relationship between American Indians and the Federal Government is a relationship that is entirely unique in America. For over a century, Federal programs have worked hand in hand with tribal leaders to encourage economic development among Native American populations. A principal part of this hearing is to listen and to learn how and why unemployment remains high in Native American populations and how the Federal Government affects economic development among the tribes.

The Bureau of Indian Affairs has promulgated regulations and established programs that oversee lands, criminal justice, education, infrastructure specifically pertaining to tribal groups. Yet tribal groups continue to struggle to grow their economies, provide jobs for their members, and have access to fundamental building blocks of a prosperous society.

According to the most recent available data, national unemployment rates for Indians was as high as 15.2 percent. On some reservations, unemployment rates reach as high as 50 percent. There is bipartisan agreement on the many failures of the BIA. Information was retrieved from the GAO and OIG in addition to tribal interviews on how BIA could better serve Americans Indians.

The Department of the Interior Office of the Inspector General has written numerous reports about widespread, systemic failures of the BIA and the Bureau of Indian Education, Two of the bureaus within the Department of the Interior responsible for administering programs designed to provide essential services to American Indians.

OIG investigators and auditors found disturbingly poor conditions in Indian schools prepared by the Bureau of Indian Education. Students attend classes sometimes in condemned buildings that lack proper electrical and heating systems, no fire detection systems, no running water. In some cases, buildings crumble around children as they attend class.

The Office of Inspector General also found that school violence was rampant, and students and staff were risking their safety and sometimes their lives attending some of these schools. These conditions are clearly not conducive to learning.

The Bureau of Indian Affairs has been accused of mismanaging taxpayer money by spending of tens of millions of dollars on failed programs such as bungled conversion of the narrow band radio technology. A BIA program can hamstring access to economic development by regulations and a process that hinders land leasing for natural resources.

Tribes are often at the mercy of the Federal Government's decisions and have little recourse for injecting their own opinions for self-determination of these processes. In other instances, private entities often pass up investment opportunity on Indian land because of a complicated 49-step process, which includes NEPA analysis required for development on Federal trust land.

Investment on tribal land is also impeded by fractionalization, a process begun almost 150 years ago by the General Allotment Act of 1887. Land parcels given to tribal members are owned in fractional portions by thousands of heirs. Both of these land management practices can present barriers to the development of resources on Native American lands.

Given these problems, it is disturbing that BIA has a long history of nonresponsiveness to the Office of Inspector General and other oversight entities and routinely ignores these reports and recommendations, while continuing to fall short on delivering the basic services to 1.9 million American Indians.

This hearing is not designed with predetermined outcomes. We are listening and looking for input. We look forward to your testimony today, and we thank you very much for attending and contributing your time.

As chair, I now recognize the distinguished ranking member, Mr. Connolly, for his opening statement.

Mr. CONNOLLY. I thank the chairman, and I thank you for holding these hearings.

Given the fact that we are already voting, I will just summarize a couple of high points of my testimony.

Without objection, would the full statement be entered into the record?

Mr. LANKFORD. Absolutely, without objection.

Mr. CONNOLLY. I thank the Chair.

I think the chair has outlined some of the problems in the Native American community and especially in management issues with BIA, from education to waste, fraud, and abuse in the programs.

On the other hand, I would hope that we would broaden our consideration to also look at the disinvestment in the Native American community occurring in this Congress.

If you look at H.R. 1, the continuing resolution that was passed on a party line vote a month and a half ago, that cut Native American housing block grants by $200 million. It reduced Royal Utility Service by 24 percent and eliminated entirely the Native American youth program. I believe that those cuts are going to have serious impacts in the Native American community throughout the United States, and so I will be interested in hearing testimony about what are those impacts and what other kinds of things do we need to avoid.

I notice, for example, that an awful lot of Native American communities strongly urged us, especially western fishing groups are urging us not to pass H.R. 872 deregulating pesticides in the Clean Water Act. Yet, of course, we are bound to do that. That is going happen, unfortunately.

I believe that we also ought to be looking at exploring opportunities for further collaboration between the Federal Government and Native American communities. Clearly, the BIA could do more in promoting tourism. Clearly, the BIA and other elements of the Federal Government could be collaborating with a lot of Native American communities on renewable energy resources, wind power, solar power, and could actually take advantage of a natural resource we all share, especially in many of those communities.

So I will be very interested in talking about job creation and in taking advantage of some resources and opportunities that exist in the community and where perhaps some of the decisions already made in this Congress have perhaps unintentionally but nonetheless had a deleterious affect on the community.

Thank you so much and thank you, Mr. Chairman.

Mr. LANKFORD. You are very welcome.

Members will have 7 days to submit opening statements, any other materials for the record; and other witnesses may submit items for the record to be able to be included within the next 7 days.

We are going to take a short recess, and when we come back I want to be able to introduce our guests that are here and swear you in and begin the process for this. We will have other Members that will join us at that time.

We expect about four votes, which that would mean probably around 40 minutes or so. So if you need to be able to slip away and be able to come back, you will have time to be able accomplish that. And then our staff will be here, and they will be able keep you up to date what is happening during the voting process.

Thank you for being here, and we stand in recess.

[Recess.]

Mr. LANKFORD. The subcommittee will come back into order.

We are going welcome our panel of guests. I am very honored that you all chose to be able to here today and be able to share your testimony with us, both oral and written testimony.

Ms. Mary Kendall is now the Acting Inspector General at the Department of the Interior. Thank you very much for being here. Ms. Anu Mittal is the Director of the Natural Resources Environment Team at GAO. Ms. Patricia Douville, council representative for the Rosebud Sioux Tribe. And Mr. Ron Allen is the chairman of the Jamestown S'Klallam Tribe.

So we really appreciate you all being here.

It is our tradition that we swear in witnesses before we begin testimony. If you all would please stand and raise your right hands.

[Witnesses sworn.]

Mr. LANKFORD. Thank you. Let the record reflect the witnesses answered in the affirmative. You may be seated.

In order to allow time for discussion, I ask you to be able to limit your oral testimony to around 5 minutes or the lights that you will see in front of you there will help count everything down for you.

Your entire written statement will be made part of the record, in case you don't get all of your oral testimony in.

I would like to begin with you, Ms. Kendall; and you may begin your 5 minutes.

STATEMENTS OF MARY L. KENDALL, ACTING INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR; ANU K. MITTAL, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; RODNEY M. BORDEAUX, PRESIDENT, ROSEBUD SIOUX TRIBE, GIVEN BY PATRICIA DOUVILLE, COUNCIL MEMBER, ROSEBUD SIOUX TRIBE; AND RON ALLEN, CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

STATEMENT OF MARY R. KENDALL

Ms. KENDALL. Thank you, Mr. Chairman, members of the committee for the opportunity to testify today about the challenges associated with economic development on tribal lands and creation of jobs for American Indians.

Responsibility to American Indians has consistently been a top management challenge for the Department of the Interior. The myriad problems we have uncovered in BIA portray programs that are sorely understaffed and poorly managed. The OIG has identified gross program inefficiencies at many levels at Indian Affairs and in tribal land management of Federal funds.

Let me summarize some of the more recent work we have done regarding the Bureau of Indian Affairs.

The Federal Government has long acknowledged the complexity of land fractionation on Indian trust operations. Fractionation is the result of dividing tribal land into parcels and allotting the parcels to individual Indians. The allotments are then subsequently divided among heirs through probate. With each generation, the amount of fractionation increases. We are working with the Department as it develops a comprehensive plan that will guide its efforts to significantly reduce fractionation.

We found that $32 million in roads funds were distributed by one region annually, but only $3 to $4 million in roads projects had any physical oversight or verification of work by BIA.

In another instance, we determined that BIA paid out over $2.4 million for airport and roads improvement. Of that, we estimate that $1.6 million had a been expended on a nonspecified road maintenance project and that as much as $200,000 may have been overbilled by a subcontractor.

BIA also mismanaged a $9 million DOT funded ferryboat in Alaska that turned into a private boat tour.

In each of these instances, meaningful management oversight was, quite simply, absent.

Nearly 7 years ago, the OIG conducted a thorough assessment of Indian country detention facilities. Our assessment revealed a long history of neglect and apathy on the part of BIA officials, which resulted in serious safety, security, and maintenance deficiencies at the majority of the detention facilities in Indian country.

We recently completed an evaluation of BIA's efforts to improve staffing levels at their detention facilities, a critical issue directly impacting safety and security and a key recommendation from our 2004 report. We have determined that, despite the focus of the seriousness of the problem and a 48 percent increase in funding, in excess of $64 million, BIA has failed to address the staffing shortages and the state of these facilities remains largely unchanged.

In February 2010, the OIG issued an evaluation of school violence prevention measures in tribally operated schools. Overall, our evaluation revealed that many schools are dangerously unprepared to prevent violence and ensure the safety of students and staff. That report on school violence was preceded by a report in August 2008, addressing preparedness for violence in BIE-operated schools. Our findings were, not surprisingly, very similar.

In some other management weaknesses, 10 individuals, including a BIA agency superintendent, have been indicted in connection with a decade-long fraud scheme to embezzle funds from a tribal credit program. Seven of the 10 indicted, including two other BIA employees, have pleaded guilty to various changes related to the fraud scheme. Total loss to the credit program is approximately $1.2 million.

For 14 years, BIA funded a nonexistent fish hatchery. BIA continued to fund the hatchery even after a superintendent visited the reservation and saw that the hatchery site had been converted into office space.

Due to our resource limitations, the OIG refers many serious allegations of employee misconduct such as fraud, theft, retaliation, and misuse of funds to the BIA on a regular basis with the expectation that the issues will be appropriately resolved or that poor managers and other ethically challenged employees will be held accountable. Unfortunately, BIA more than any other bureau at Interior, has a history of failing to respond to the OIG referrals or, even worse, completely disregarding the serious matters referred to them.

Thank you, Mr. Chairman, for the opportunity to share this information with you. I will be happy to answer any questions you or other members of the committee may have.

[The prepared statement of Ms. Kendall follows:]

TESTIMONY OF MARY L. KENDALL
ACTING INSPECTOR GENERAL
FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE SUBCOMMITTEE ON TECHNOLOGY,
INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS
AND PROCUREMENT REFORM
APRIL 7, 2011

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify this morning about the challenges associated with economic development on tribal lands and the creation of jobs for American Indians.

The Office of Inspector General (OIG) is a small, but highly motivated organization that provides independent oversight to prevent and detect waste, fraud, and mismanagement and promotes excellence, integrity, and accountability within the programs, operations and management of DOI.

The OIG accomplishes its mission by performing audits, investigations, evaluations, inspections, and other reviews of the Department's programs and operations. We independently and objectively identify risks and vulnerabilities that directly affect, or could impact, DOI's mission and the vast responsibilities of its bureaus and offices. We target our resources by identifying and developing solutions for the Department's most serious management and program challenges.

Our organizational strategies are aimed at ensuring the OIG is relevant and respected for its independent expertise and objective products. We continuously evaluate our efforts to improve the accountability of DOI and our responsiveness to Congress, the Department, and the public. We seek continuous improvement within, and we believe in the limitless potential of our employees to maintain OIG as a leading organization in the Federal government.

DOI Responsibility to American Indians

Management problems persist in programs for Indians. The Department manages relationships with 564 Federally recognized Indian tribes, has trust responsibilities for 112 million surface and subsurface acres of land belonging to Indian tribes and individuals, and provides education services to approximately 42,000 Indian children in 184 schools and dormitories.

Responsibility to American Indians has consistently been a top management challenge for the Department. Indian Country programs managed by the Department include Indian Trust for Lands and Funds, Indian Education, Self-Determination, Energy and Economic Development, Indian Gaming, and Justice Services. Approximately 25 percent of OIG investigations involve Indian Country issues.

The Federal Government has long acknowledged the resulting complexity from land fractionation on Indian Trust operations. Fractionation is the result of dividing Tribal land into

parcels and allotting the parcels to individual Indians. The allotments are subsequently divided among heirs through probate. With each generation, the amount of fractionation increases. We are working with the Department as it develops a comprehensive plan that will guide its efforts to significantly reduce fractionation.

The myriad problems we have uncovered in BIA portray programs that are sorely understaffed, and poorly managed. The OIG has identified gross program inefficiencies at many levels of Indian Affairs and in tribal management of Federal funds.

Let me summarize some the more recent work we have done regarding the Bureau of Indian Affairs:

Indian Land Fractionation

In anticipation of the *Cobell* settlement, in which a $1.9 billion fund is established for the voluntary buy-back and consolidation of fractionated land interests, the OIG conducted an evaluation to identify challenges to implementing the settlement and solving the long-standing problem of Indian land fractionation. This evaluation was the first in a series on the Indian land consolidation provision of the settlement. Fractionation has two primary impacts: it limits the Tribes' productive use of land and is very costly to the Federal Government to administer the approximately 4.1 million fractionated interests on 99,000 fractionated tracts. Unless a tribe owns at least a majority interest in a fractionated tract, the tribe must seek the approval of other owners in order to lease the tract for economic development purposes. This need for approval has essentially stopped economic development on some tracts of land.

We found two major opportunities for the Department to enhance the likelihood of success in this endeavor: improving communication and coordination in terms of strategic planning and among the various offices that must be involved in the consolidation process and identifying the resources needed for this consolidation effort. We are continuing to work cooperatively with the Department to address the other management areas that must operate effectively to ensure success of the land consolidation envisioned in the *Cobell* settlement.

Roads and Transportation Funds

In one BIA region, we found that inattention to expenditures and failure to manage the roads program has jeopardized the success of roads projects and caused millions of dollars to be wasted or unaccounted for. $32 million in funding was distributed by this region a year, but only $3 to 4 million in roads projects had any physical oversight or verification of work completed. Internal management controls were so broken down that wage-grade employees were earning over $100,000 a year, with overtime, without explanation. We were not able to substantiate that overtime was improperly or illegally being claimed. This was due, however, to the lack of any uniform system of records for tracking the overtime worked by the employees in question.

In another instance, we determined that BIA paid out over $2.4 million for airport and roads improvement. As a result of our investigation, we estimate that $1.6 million had been expended on a non-specified road maintenance project and that as much as $200,000 may have been overbilled by a sub-contractor. We were unable to determine the actual percentage of work

completed on the project or the disposition of the remaining funds due to a lack of project oversight and funds accountability by the awarding office. Since 2004, this contract was listed as "suspended" and had been in this limbo status with little or no action until our investigation caused BIA to take action and cancel the contract. The United States Attorney's Office declined to pursue a civil recover for the funds because of BIA's lack of due diligence in administering the original project, and its contribution to the failure of the project and misuse of its funding.

BIA mismanaged a $9 million DOT funded ferry boat in Alaska that turned into a private boat tour. We investigated a complaint regarding misuse of funding intended to build a year-round high-speed car and passenger ferry to operate between Homer, Seldovia, Jacolof Bay and Halibut Cove on the Kachemak Bay. The complaint alleged that the "pass through" funding from the U.S. Department of Transportation in the amount of $9 million of a planned $14 million, which was supposed to be overseen by BIA, and was misspent. Instead, the complaint alleged that the recipient used the funding to build what has been described as a tour boat, without capability to haul vehicles, traveling only between Homer and Seldovia.

We found a lack of sufficient controls and oversight over Federal funding which would have prevented these funds from being spent contrary to the intended use. We determined that the proposal submitted to the BIA by the recipient described a scheduled year-round high-speed car/passenger ferry servicing Homer, Seldovia and other unserved points on Kachemak Bay. The language of the Congressional appropriations by which the project was funded indicated monies for a ferry to serve "Homer – Halibut Cove – Jacolof Bay – Seldovia." Further, we concluded that the recipient did change the scope of the project by selecting a style boat that varied significantly from the original stated intent and from the specifications of the Request for Proposal; however, we found a clause in the Annual Funding Agreements between BIA and the recipient which allowed a change in scope. We also found instances in which the recipient indicated its intent to the Government to depart from the original specifications prior to the actual departure.

Detention Centers

Nearly seven years ago, the OIG conducted a thorough assessment of Indian Country Detention Facilities. We found that BIA had failed to provide safe and secure detention facilities throughout Indian Country. Our assessment revealed a long history of neglect and apathy on the part of BIA officials, which resulted in serious safety, security, and maintenance deficiencies at the majority of facilities we visited. Our work in this area received considerable attention and Congress appropriated significant funding to improve upon what was characterized as a national disgrace.

We recently completed an evaluation of BIA's efforts to improve staffing levels at their detention facilities, a critical issue directly impacting safety and security and a key recommendation from our 2004 report. We have determined that despite the focus on the seriousness of the problem and a 48% increase in funding in excess of $64 million, BIA has failed to address staffing shortages and the state of these facilities remains largely unchanged. Additionally, we were unable to determine how much of the increased funding was spent.

Indian Schools

In February of 2010, the Office of Inspector General issued an evaluation of school violence prevention measures in tribally operated schools. We conducted this review to determine the quality of school safety measures in preventing violence against students and staff, from both internal and external threats.

Overall, our evaluation revealed many indicators of potential violence, deficiencies in school policies aimed at preventing violence, and substantial deficiencies in preventative and emergency safety procedures. As a result, many schools are dangerously unprepared to prevent violence and ensure the safety of students and staff.

Tracking violence and/or violent trends within Indian schools is particularly problematic because no functional, comprehensive reporting or tracking system exists. While we found few statistics on violence indicators at Indian schools, we found a wealth of supporting anecdotal evidence during our visits. For example, we found confiscated weapons, signs of gang activity, and substance abuse. Weapons end up on campuses as a result of various inadequate physical security features.

Given the fact that Indian communities suffer from high violent crime rates, maintaining a secure campus is, perhaps, as important as keeping weapons off campus. We identified an array of physical security deficiencies in areas such as security fencing, camera surveillance systems, visitor procedures, and security guards.

Finally, most of these schools are simply not prepared for an emergency. We reviewed emergency plans at almost all schools visited. We requested that each school run the emergency drills according to plan to identify any weaknesses. We noted numerous deficiencies in schools' abilities to run the drills due to high staff turnover, ineffective intercom systems, and inadequate classroom security. Lockdown drills we observed revealed that most schools had classroom doors that could only be locked from the outside. As a result, staff needed to go outside to lock doors with keys, exposing staff and students to potential danger.

These are some of the issues we uncovered in our visits to schools throughout Indian Country. Our February 2010 report on school violence was preceded by a report in August 2008 addressing preparedness to address violence in BIE operated schools. Our findings were, not surprisingly, similar.

Earlier, in 2007, we issued a report regarding the physical conditions at BIE operated elementary and secondary schools, including boarding schools. We found severe deterioration that directly affected the health and safety of Indian children and their ability to receive an education. Deterioration ranged from minor deficiencies such as leaking roofs, to severe deficiencies such as classroom walls buckling and separating from their foundation; outdated electrical systems; inadequate fire detection and suppression systems; improperly maintained furnaces; and condemned school buildings that had not been torn down.

Other Management Weaknesses

Ten individuals, including the BIA Agency Superintendent, have been indicted in connection with a decade-long fraud scheme to embezzle tribal funds from the Fort Peck Credit Program, a tribal lending program of the Fort Peck Tribe in northeast Montana. Seven of the ten indicted, including two other BIA employees, have pleaded guilty to various charges related to the fraud scheme. Total loss to the Credit Program is approximately $1.2 million. As a result of our investigation, we determined that BIA managers overseeing this program displayed significant management failures.

For 14 years, BIA funded a nonexistent fish hatchery. Our investigation confirmed that for 14 years the BIA funded a hatchery that never hatched a single fish. BIA continued to fund the hatchery even after a superintendent visited the Reservation and saw that that the hatchery site had been converted into office space and after the superintendent was notified that the former Tribal Chairperson had spent BIA-provided funds, including those meant for the Tribe's Fisheries Management Program, towards the purchase of real estate. Funding for the hatchery finally stopped in late 2006 when BIA's Regional Office learned of the situation.

The Office of Inspector General is currently conducting an evaluation on Efficiency and Effectiveness of the Information Assurance Program at BIA. The objectives of this evaluation are to find out whether BIA tracks its IT expenditures ($72 million annually); whether the program effectively provides confidentiality, integrity, and availability of information to carry out the BIA mission; and to evaluate whether the management of the program is in compliance with laws and federal regulations. The OIG has successfully compromised the BIA network and user accounts without detection and has gained access to the BIA network and other financial systems. Access has been validated at multiple locations and continues to be undetected. Furthermore, two major BIA offices were unable to accurately identify all IT assets or to assure the effectiveness of security and processes surrounding those assets.

Non-Responsiveness

Due to resource limitations, the OIG can only investigate and/or review a small percentage of the issues that come to our attention. As a result, many of the issues are referred back to the bureaus so that they can be thoroughly evaluated and resolved appropriately. For the more significant issues, our process requires the bureaus to respond back to us, communicating the actions that have been taken to resolve the issues and any preventative measures that can be taken to ensure that similar situations to not re-occur in the future.

For many years, the Bureau of Indian Affairs has demonstrated tremendous inefficiency and has poorly managed the matters that we refer to them for action. The OIG refers serious allegations of employee misconduct such as fraud, theft, retaliation, misuse of funds to the BIA on a regular basis with the expectation that the issues will be appropriately resolved or that poor managers and/or ethically challenged employees will be held accountable. Unfortunately, BIA, more than any other bureau at Interior, has a history of failing to respond to OIG referrals or even worse, completely disregarding the serious matters referred to them. As a direct result of BIA's inattention to these matters, the OIG recently had to create a new category within our

referral program - "Non-Responsive"- to eventually close out the issues, many, more than a year overdue. We have since elected to begin reporting "non-responsive" matters in our Semiannual Report to the Congress.

Thank you, Mr. Chairman, for the opportunity to share this information with you. I will be happy to answer any questions you or other members of the Subcommittee may have.

Mr. LANKFORD. Thank you very much.
Director Mittal.

STATEMENT OF ANU K. MITTAL

Ms. MITTAL. Mr. Chairman and members of the subcommittee. I am pleased to be here today to participate in your hearing on challenges to the economic development in Indian country.

As you know, Indian tribes are among the Nation's most economically distressed groups and often lack basic infrastructure. Without such infrastructure, tribes often find it difficult to compete successfully in the economic mainstream.

In addition, our past work has identified several unique circumstances that exist in Indian country that may create additional uncertainties or impediments for both tribes and private companies wishing to pursue economic activity in these areas. I would like to briefly describe five of these unique circumstances for you.

The first unique circumstance that creates uncertainty relates to the land-in-trust status for Indian lands. In 1934, the Indian Reorganization Act provided the Secretary of the Interior discretionary authority to take land in trust on behalf of federally recognized tribes or their members. Trust status helps secure these lands for tribal use, and these lands are no longer subject to State and local property taxes and zoning ordinances.

However, a 2009 Supreme Court decision has created significant uncertainty regarding the land-in-trust status for a large number of tribes. This is because the Supreme Court ruled that Interior can only take land in trust for tribes that were under Federal jurisdiction in 1934. At this time, it is unclear how many pending land-in-trust applications will be affected by this decision.

The second circumstance unique to Indian country relates to tribal environmental standards. The Clean Water Act, Safe Drinking Water Act, and Clean Air Act authorized the EPA to treat Indian tribes as States for the purposes of implementing these laws on tribal lands. As sovereign governments, tribes want to exercise this authority because they believe they are more familiar with their own environmental needs. However, States are concerned that allowing tribes to set these standards could result in a patchwork of standards within the State and potentially hinder a State's overall economic development plans.

Our past work has indeed found that this authority has resulted in several disagreements between tribes and States. In addition, more stringent tribal standards could also act as a disincentive for companies who may choose to not operate their businesses on tribal lands because of these standards.

The third circumstance relates to the use of special tax provisions for Indian reservations. One example of such a special tax provision is allowing tribes to use tax-exempt bonds to finance essential government functions on reservations. Use of tax-exempt bonds lowers borrowing costs for tribes and provides higher after-tax yields to investors. However, it is unclear to what extent this provision has actually helped tribes, because the IRS has not yet issued regulations defining what activities are allowable under this provision. Without these regulations, tribes have limited guidance

to help them decide what function they can fund with tax-exempt bonds.

The fourth circumstance relates to the complex process of obtaining rights of way across Indian lands. Securing rights of way is an essential step to providing tribes with the critical infrastructure that they need to support economic activity. However, obtaining rights of way can be time-consuming and expensive, in part because Interior must approve these applications.

Several of the steps that service providers must take to get Interior's approval involve negotiating with the landowners, who can be individuals, multiple owners, or tribes. If an individual allotment of Indian land is owned by multiple owners, sometimes reaching into the hundreds, then this process can become even more onerous because Federal regulations require that the majority of owners must approve a right of way before it can be finalized.

The final unique circumstance I would like to discuss is the legal and judicial systems that exist in Indian country. Having effective legal and judicial systems is often considered a prerequisite to attracting private investment to tribal lands. This is because such systems provide investors with assurance that disputes will be resolved fairly. However, the legal and judicial systems on tribal lands are fairly complex and tribes also have sovereign immunity. These circumstances can act as disincentives for businesses who are trying to decide whether to operate on tribal or nontribal lands.

As you can see, Mr. Chairman, there are a number of unique circumstances that tribes and business owners must consider when making decisions about whether or not to pursue economic development in Indian country. In some cases, these circumstances can act as impediments.

This concludes my prepared statement. I'd be happy to answer any questions.

[The prepared statement of Ms. Mittal follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, House of Representatives

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INDIAN ISSUES

Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands

Statement of Anu K. Mittal, Director
Natural Resources and Environment

GAO-11-543T

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Highlights

Highlights of GAO-11-543T, a statement before the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

Indian tribes are among the most economically distressed groups in the United States. In 2008, the U.S. Census Bureau reported that the poverty rate among American Indian and Alaska Natives was almost twice as high as the population as a whole—27 percent compared with 15 percent. Residents of tribal lands often lack basic infrastructure, such as water and sewer systems, and sufficient technology infrastructure. Without such infrastructure, tribal communities often find it difficult to compete successfully in the economic mainstream.

This testimony statement summarizes GAO's observations on (1) five broad categories of unique issues that may create uncertainty and therefore affect economic activity in Indian country and (2) tribes' use of special gaming and small business contracting provisions. It is based on prior GAO reports.

This testimony statement contains no new recommendations.

View GAO-11-543T or key components. For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

April 7, 2011

INDIAN ISSUES

Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands

What GAO Found

GAO's previous work has identified five broad categories of unique issues that may create uncertainty for tribes or, in some cases, private companies wishing to pursue economic activities on Indian reservations.

Accruing land in trust. Having a land base is essential for tribal economic development activities such as agriculture, energy development, and gaming. However, a February 2009 Supreme Court decision has raised uncertainty about the process for taking land in trust for tribes and their members.

Tribal environmental standards. The Clean Water Act, Safe Drinking Water Act, and Clean Air Act authorize the Environmental Protection Agency to treat Indian tribes in the same manner as states. In some cases, however, states are concerned that tribes with this authority may impose standards that are more stringent than the state standards, which could result in a patchwork of standards within the state and potentially hinder economic activity.

Indian tax provisions. Tribes face uncertainties regarding the types of activities that they can finance with tax-exempt bonds. Also, in 2008, GAO reported that there were insufficient data to (1) identify the users of a tax provision that allows for accelerated depreciation of certain property used by businesses on Indian reservations and (2) assess whether the provision had increased economic development on Indian reservations.

Obtaining rights-of-way. Securing rights-of-way across Indian land is important in providing Indian lands with the infrastructure needed to support economic activity. In 2006, GAO reported that obtaining rights-of-way through Indian lands was a time-consuming and expensive process.

Legal status of tribes. The unique legal status of tribes has resulted in a complex set of rules that may affect economic activities. For example, Indian tribes have sovereign immunity, which can influence a business's decision to contract with a tribe. Also, the limitations imposed by federal law on Indian tribes' civil jurisdiction over non-Indians on Indian reservations can create uncertainties over where lawsuits arising out of contracts with tribes can be brought.

In contrast to these unique issues that may pose challenges to economic activity in Indian country, some Indian tribes have taken advantage of special provisions for gaming and small business contracting. The National Indian Gaming Commission reports that tribal gaming operations generated $26.5 billion in revenue for 2009. However, not all tribes have gaming operations and the majority of the revenue is generated by a fraction of the operations. Similarly, Alaska Native Corporations (ANC) have been granted special procurement advantages. In 2006, GAO reported that obligations to firms owned by ANCs that participated in the Small Business Administration's 8(a) program increased from $265 million in fiscal year 2000 to $1.1 billion in 2004. We have ongoing work looking at the use of these special procurement advantages.

Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee:

I am pleased to be here today to participate in your hearing on the challenges of trying to increase economic activity in Indian Country. Indian tribes are among the most economically distressed groups in the United States. For example, in 2008, the U.S. Census Bureau reported that American Indians and Alaska Natives were almost twice as likely to live in poverty as the rest of the population—27 percent compared with 15 percent. Residents of tribal lands also often lack basic infrastructure, such as water and sewer systems, and sufficient technology infrastructure, such as telecommunications lines that are commonly found in other American communities. Without such infrastructure, tribal communities often find it difficult to compete successfully in the economic mainstream.

Our testimony today will cover (1) five broad categories of unique issues that may create uncertainty and therefore affect economic activity in Indian Country—land issues, tribal environmental standards, Indian tax provisions, rights-of-way, and certain issues related to the legal status of tribes—and (2) tribes' use of special gaming and small business contracting provisions. This statement is based on previously published work issued from December 2001 through March 2011. See the list of related GAO products at the end of this statement and other products cited for detailed descriptions of the scope and methodology used to conduct our work. We conducted our work in accordance with generally accepted government auditing standards or GAO's Quality Assurance Framework, as appropriate to each engagement.

Background

Tribal lands vary dramatically in size, demographics, and location. They range in size from the Navajo Nation, which consists of about 24,000 square miles, to some tribal land areas in California comprising less than 1 square mile. Over 176,000 American Indians live on the Navajo reservation, while other tribal lands have fewer than 50 Indian residents. Some Indian reservations have a mixture of Indian and non-Indian residents. In addition, most tribal lands are rural or remote, although some are near metropolitan areas.

The federal government has consistently recognized Indian tribes as distinct, independent political communities with inherent powers of a limited sovereignty which has never been extinguished. To help manage tribal affairs, tribes have formed governments or subsidiaries of tribal governments including schools, housing, health, and other types of

corporations. The United States has a trust responsibility to recognized Indian tribes and maintains a government-to-government relationship with those tribes. As of October 2010, there were 565 federally recognized tribes—340 in the continental United States and 225 in Alaska.[1]

According to tribal officials and government agencies, conditions on and around tribal lands—including the lack of technology infrastructure such as telecommunications lines—generally make successful economic development more difficult. In addition, a 1999 Economic Development Administration (EDA) study that assessed the state of infrastructure in American Indian communities found that these communities also had other disadvantages that made successful business development more difficult.[2] This study found that the high cost and small markets associated with investment in Indian communities continued to deter widespread private sector involvement.

To help address the needs of Indian tribes, various federal agencies provide assistance, including economic development assistance. The Bureau of Indian Affairs (BIA) in the Department of the Interior is charged with the responsibility of implementing federal Indian policy and administering the federal trust responsibility for about 2 million American Indians and Alaska Natives. BIA assists tribes in various ways, including providing for social services, developing and maintaining infrastructure, and providing education services. BIA also attempts to help tribes develop economically by, for example, providing resources to administer tribal revolving loan programs and guaranteed loan programs to improve access to capital in tribal communities. In addition to the support provided by BIA, other agencies with significant programs for tribes include the Department of Health and Human Services, which provides funding for the Head Start Program and the Indian Health Service; the Department of Housing and Urban Development, which provides support for community development and housing-related projects; and the Department of Agriculture, which provides support for services pertaining to food distribution, nutrition programs, and rural economic development.

[1]75 Fed. Reg. 60810 (Oct. 1, 2010); 75 Fed. Reg. 66124 (Oct. 27, 2010).

[2]Linda A. Riley, B. Nassersharif, and J. Mullen, *Assessment of Technology Infrastructure in Native Communities*, a study based on a survey of 48 Native communities, New Mexico State University, (Las Cruces, N.Mex.: 1999), EDA project no. 99-07-13799.

Some Unique Issues that May Affect Economic Activity in Indian Country

Our prior work has highlighted five broad categories of unique issues that have the potential to create uncertainty for tribes or, in some cases, private companies wishing to pursue economic activities on Indian reservations. Some of the issues that we have identified during our past work include (1) accruing land in trust for tribes and individual tribal members, (2) tribal environmental standards, (3) Indian tax provisions, (4) obtaining rights-of-way, and (5) certain legal issues that arise from the unique legal status of tribes. In addition to these five issues there may be others, such as access to financing, which may also hinder economic activity on Indian reservations. The five broad categories should only be considered as illustrative of some of the unique circumstances that exist in Indian country, which tribes or other business entities will need to take into account when they consider undertaking economic activities on tribal lands.

Land in Trust Issues May Create Uncertainty

Having a land base is essential for many tribal economic development activities such as agriculture, grazing, timber, energy development, and gaming. Since the early days of colonization, Indian lands have diminished significantly, in large part because of federal policy. By 1886, Indian lands had been reduced to about 140 million acres, largely on reservations west of the Mississippi River. Federal policy encouraging assimilation in the late 1800s and early 1900s further reduced Indian lands by two-thirds, to about 49 million acres by 1934. In 1934, however, the enactment of the Indian Reorganization Act changed the government's Indian policy to encourage tribal self-governance.[3] Section 5 of the act provided the Secretary of the Interior with discretionary authority to take land in trust on behalf of Indian tribes or their members. Trust status means that the federal government holds title to the land in trust for tribes or individual Indians. Once land is taken in trust it is no longer subject to state and local property taxes and zoning ordinances.[4] In 1980, Interior established a regulatory process intended to provide a uniform approach for taking land in trust.[5] Under the regulations, tribes or individual Indians who purchase or own property on which they pay property taxes can submit a written request to the Secretary of the Interior to have the land taken in trust; if

[3]Act of June 18, 1934 (Indian Reorganization Act), ch. 576, 48 Stat. 984-988 (1934), *codified as amended at* 25 U.S.C. §§ 461-479.

[4]Department of the Interior regulations provide that zoning ordinances do not apply to land in trust except as permitted by the Secretary. 25 C.F.R. § 1.4.

[5]25 C.F.R. pt. 151.

approved, the ownership status of the property would be converted from taxable status to nontaxable Indian trust status. Some state and local governments support the federal government's taking additional land in trust for tribes or individual Indians, while others strongly oppose it because of concerns about the impacts on their tax base and jurisdictional control. Since 1934, the total acreage held in trust by the federal government for the benefit of tribes and their members has increased from about 49 million to about 54 million acres.[6]

We reported in July 2006 that BIA generally followed its regulations for processing land in trust applications from tribes and individual Indians to take land into trust, but had no deadlines for making decisions on these applications.[7] BIA generally responded to our recommendations to improve the processing of such applications, but this issue continues to create uncertainty in Indian country, in part, because of a February 24, 2009, Supreme Court decision and ongoing litigation. The Supreme Court held that the Indian Reorganization Act only authorizes the Secretary of the Interior to take land into trust for a tribe or its members if that tribe was under federal jurisdiction when the law was enacted in 1934.[8] The court did not define what constituted being under federal jurisdiction but did find that a particular tribe, which was not federally recognized until 1983, was not under federal jurisdiction in 1934. It is not clear how many tribes or pending land in trust applications will be affected by this decision, but the decision raises a question about the Secretary's authority to take land in trust for the 50 tribes that have been newly recognized

[6]The 5-million acre difference between these two figures represents the net change of Indian land in trust from 1934. In addition to Indian applicants seeking to have land converted to trust status, Indian applicants can also seek to have land already in trust status converted to fee status (which is subject to property tax) and tribes and individual Indians can also lose trust lands through a variety of means, including probate and foreclosure. These two processes result in land "coming into trust" (referred to as acquisitions) and land "going out of trust" (referred to as disposals). The regulations governing taking land out of trust are in 25 C.F.R. pt. 152. For example, for the calendar year ending December 31, 1997, BIA reported acquiring about 360,000 acres and disposing of about 260,000 acres, for a net increase in tribal and individual Indian trust acreage of about 100,000 acres.

[7]GAO, *Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, GAO-06-781 (Washington, D.C.: July 28, 2006).

[8]Carcieri v. Salazar, 555 U.S. 379 (2009).

since 1960 and their members.[9] The Secretary's decisions to take land in trust for two of these tribes—the Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan and the Cowlitz Indian tribe of Washington—have been challenged in court.[10]

Having or securing the land does not lead to economic development if that land sits idle. In the past we have reported on concerns about idle Indian lands and BIA's process for leasing Indian lands,[11] but we have not done any recent work on these issues.

Tribal Environmental Standards May Create Uncertainty

The Clean Water Act, Safe Drinking Water Act, and Clean Air Act authorize the Environmental Protection Agency (EPA) to treat Indian tribes in the same manner as it does states,[12] referred to as TAS (treated as states),[13] for the purposes of implementing these laws on tribal lands. On the one hand, tribes want to be treated as states and assume program responsibilities to protect their environmental resources because they are sovereign governments and have specific knowledge of their environmental needs. Tribes also generally believe that TAS status and program authority are important steps in addressing the potential impacts of economic

[9]For additional information on BIA's administrative process for granting federal recognition and a list of newly recognized tribes see GAO, *Indian Issues: Improvements Needed in Tribal Recognition Process*, GAO-02-49 (Washington, D.C.: Nov. 2, 2001). Also see enclosure II of GAO, *Indian Issues: BLM's Program for Issuing Individual Allotments on Public Lands Is No Longer Viable*, GAO-07-23R (Washington, D.C.: Oct. 20, 2006) and appendix II of GAO, *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, GAO-10-768 (Washington, D.C.: July 28, 2010) for updated lists of new and restored tribes. The Shinnecock Indian Nation of New York, the newest federally recognized tribe, was recognized as of October 1, 2010. 75 Fed. Reg. 66124 (Oct. 27, 2010).

[10]Patchak v. Salazar, 646 F. Supp. 2d 72 (D.D.C. 2009), *rev'd*, 632 F.3d 702 (D.C. Cir. 2011) (remanding to district court for further proceedings); Clark County v. Salazar, No. 11-00278 (D.C. Cir. filed Jan. 31, 2011).

[11]GAO, *Indian Programs: BIA's Management of the Wapato Irrigation Project*, GAO/RCED-97-124 (Washington, D.C.: May 28, 1997); GAO, *Indian Programs: BIA Should Streamline Its Processes for Estimating Land Rental Values*, GAO/RCED-99-165 (Washington, D.C.: June 30, 1999).

[12]Under these laws, EPA may authorize states to establish their own standards and carry out a state program in lieu of the federal program. State standards must meet or exceed federal requirements.

[13]The acts generally use the term "treat as states." EPA and most Indian tribes prefer to use the term "treatment in the same manner as a state."

development affecting their land. On the other hand, in some cases, states are concerned that tribes with program authority may impose standards that are more stringent than the state's, resulting in a patchwork of standards within the state and potentially hindering the state's economic development plans.

In October 2005, we reported that since 1986, when Congress amended the first of the three environmental laws to allow TAS status for tribes, a number of disagreements between tribes, states, and municipalities had arisen, over land boundaries, environmental standards, and other issues.[14] The disagreements had been addressed in various ways, including litigation, collaborative efforts, and changes to federal laws. For example, in *City of Albuquerque v. Browner*,[15] the city challenged EPA's approval of the nearby Pueblo of Isleta tribe's water quality standards, which are more stringent than those of New Mexico. EPA's approval was upheld. In other disagreements, some tribes and states have addressed the issues more collaboratively. For example, the Navajo Nation and the Arizona Department of Environmental Quality entered into a cooperative agreement that, among other things, recognizes the jurisdiction of the Navajo Nation within its reservation and establishes a plan to share the cost of pilot projects. Regarding the use of federal legislation to address disagreements, a federal statute enacted in August 2005, requires Indian tribes in Oklahoma to enter into a cooperative agreement with the state before EPA can approve a tribe's TAS request.[16] At the time of our October 2005 report, the Pawnee Nation was the only Oklahoma tribe that had been awarded TAS status to set its own water quality standards, and we have not conducted any more recent work on this issue.

Uncertainties Regarding the Use of Selected Indian Tax Provisions

The tax code has also been used to promote economic activity in Indian country. We have reported on tax provisions regarding (1) the uncertainties that tribes faced regarding the types of activities that they could finance with tax-exempt bonds and (2) the impact of accelerated depreciation provisions.

[14]GAO, *Indian Tribes: EPA Should Reduce the Review Time for Tribal Requests to Manage Environmental Programs*, GAO-06-95 (Washington, D.C.: Oct. 31, 2005).

[15]97 F.3d 415 (10th Cir. 1996), *cert. denied*, 522 U.S. 965 (1997).

[16]Pub. L. No. 109-59, § 10211, 119 Stat. 1144, 1937 (2005).

In September 2006, we reported on Indian tribal governments' use of tax-exempt bonds under section 7871(c) of the Internal Revenue Code.[17] Section 7871(c), which was originally enacted in 1983, generally limits the use of tax-exempt bonds by Indian tribal governments to the financing of certain activities that constitute "essential government functions."[18] In 1987, section 7871(e) was added to the code to limit the essential governmental functions standard further to provide that an essential governmental function does not include any function which is not customarily performed by state and local governments with general taxing powers. To date the Internal Revenue Service has not issued regulations defining essential government function.[19] The lack of a definition has created uncertainty among tribes regarding the types of activities that they can finance using tax-exempt bonds. In addition, this custom-based essential governmental function standard has proven to be a difficult administrative standard and has led to audit disputes, based on difficulties in determining customs, the evolving nature of the functions customarily performed by state and local governments, and increasing involvement of state and local governments in quasi-commercial activities. In trying to determine what the customary practices were of state and local governments that tribes should be held accountable to, we reported that state and local governments had provided financial support for a variety of facilities, including rental housing, road transportation, parking facilities, park and recreation facilities, golf facilities, convention centers, hotels, and gaming support facilities.

Section 1402 of the American Recovery and Reinvestment Act of 2009 added a $2 billion bond authorization for a new temporary category of tax-exempt bonds with lower borrowing costs for Indian tribal governments known as "Tribal Economic Development Bonds" under section 7871(f) of the Internal Revenue Code to promote economic development on Indian lands.[20] In general, this new authority provides tribal governments with greater flexibility to use tax-exempt bonds to finance economic

[17]GAO, *Federal Tax Policy: Information on Selected Capital Facilities Related to the Essential Governmental Function Test*, GAO-06-1082 (Washington, D.C.: Sept. 13, 2006).

[18]Indian Tribal Government Tax Status Act, Pub. L. No. 97-473, § 202, 96 Stat. 2605 (1983), *codified as amended at* 26 U.S.C. § 7871(c).

[19]On August 9, 2006, the Internal Revenue Service published an advanced notice of proposed rulemaking regarding the definition of essential government function and solicited comments on a definition. 71 Fed. Reg. 45474 (Aug. 9, 2006).

[20]Pub. L. No. 111-5, § 1402, 123 Stat. 115, 351 (2009).

development projects than is allowable under the existing essential governmental function standard of section 7871(c). The Internal Revenue Service allocated the $2 billion of bond issuance authority provided by section 1402 to 134 tribal governments in two rounds. Furthermore, the act required the Secretary of the Treasury to study the effect of section 1402 and report to Congress on the results of the study, including the Secretary's recommendation regarding the provision. According to the Treasury Department, the House Ways and Means Committee and the Senate Finance Committee indicated that, in particular, Treasury should study whether to repeal on a permanent basis the existing more restrictive essential governmental function standard for tax-exempt governmental bond financing by Indian tribal governments under section 7871(c).[21] The act required that the study be completed no later than 1 year after enactment, which would have made the deadline February 17, 2010. The Treasury Department published a notice in the Federal Register in July 2010 seeking comments from tribal governments regarding the tribal economic development bond to assist the department in developing recommendations for the required study, but, to our knowledge, the department has not yet issued the report to Congress. There is continuing uncertainty in this area because it is unknown what the Treasury Department may recommend regarding changes to section 7871(c) and ultimately what changes, if any, Congress may adopt.

A second tax measure intended to promote economic activity in Indian country is the Indian reservation depreciation provision, enacted in 1993. The provision acts as an incentive for investment on Indian reservations because it permits taxpayers to accelerate their depreciation for certain property used by businesses on Indian reservations.[22] The provision's special depreciation deduction schedule permits eligible taxpayers to take

[21] 75 Fed. Reg. 39730 (July 12, 2010).

[22] 26 U.S.C. § 168(j). Indian reservation is defined as (1) Indian reservations; (2) public domain Indian allotments; (3) former Indian reservations in Oklahoma which are within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior and are recognized by the Secretary as eligible for trust land status under applicable regulations in effect on the day of the provision's enactment; (4) land held by incorporated Native groups, regional corporations, and village corporations; (5) all land within the limits of any Indian reservation under the jurisdiction of the United States Government; (6) all dependent Indian communities; (7) all Indian allotments, the Indian titles to which have not been extinguished; and (8) any lands not within the limits of an Indian reservation, part of a dependent Indian community, nor an allotment which is either held by the United States in trust or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

a larger and earlier deduction for depreciation from their business incomes than they otherwise would be allowed, thereby reducing any tax liability. Reducing tax liability earlier is an incentive for economic development because having a lower tax payment today is worth more to the taxpayer than having a lower tax payment in the future. However, in June 2008, we reported that there were insufficient data to identify users of the provision and assess whether the provision had increased economic development on Indian reservations.[23]

Obtaining Rights-of-Way Across Indian Land Can Involve Uncertainty

Securing rights-of-way across Indian lands is an important component of providing Indian lands with the critical infrastructure needed to support economic activity. We have reported on the uncertainties that telecommunication service providers and a nonprofit rural electric cooperative have faced in trying to negotiate rights-of-way involving Indian lands.

In January 2006, we reported that according to several telecommunications service providers and tribal officials, obtaining a right-of-way through Indian lands is a time-consuming and expensive process that can impede service providers' deployment of telecommunications infrastructure.[24] The right-of-way process on Indian lands is more complex than the right-of-way process for non-Indian lands because BIA must approve the application for a right-of-way across Indian lands. BIA grants or approves actions affecting title on Indian lands, so all service providers installing telecommunications infrastructure on Indian lands must work with BIA or its contractor (a realty service provider) to obtain a right-of-way through Indian lands.[25] To fulfill the requirements of federal regulations for rights-of-way over Indian lands and obtain BIA approval, service providers are required to take multiple steps and coordinate with several entities during the application process. These

[23]GAO, *Tax Expenditures: Available Data Are Insufficient to Determine the Use and Impact of Indian Reservation Depreciation*, GAO-08-731 (Washington, D.C.: June 26, 2008).

[24]GAO, *Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*, GAO-06-189 (Washington, D.C.: Jan. 11, 2006).

[25]The Indian Self-Determination and Education Assistance Act, as amended, directs Interior, at the request of a tribe, to contract with Indian tribes or tribal organizations to carry out the services and programs the federal government provides to Indians. Therefore, as authorized by the act, regional nonprofit corporations or tribal entities can assume management of the realty function from BIA to perform realty services for Indian lands. 25 U.S.C. § 450f.

steps must be taken to obtain a right-of-way over individual Indian allotments as well as tribal lands. Several of the steps involve the landowner, which could be an individual landowner, multiple landowners, or the tribe, depending on the status of the land. Specifically, the right-of-way process requires (1) written consent by the landowner to survey the land; (2) an appraisal of the land needed for the right-of-way; (3) negotiations with the landowner to discuss settlement terms; (4) written approval by the landowner for the right-of-way; and (5) BIA approval of the right-of-way application.[26] One telecommunication service provider told us that an individual Indian allotment of land can have over 200 owners, and federal regulations require the service provider to gain approval from a majority of them. The service provider stated that the time and cost of this process is compounded by the fact that a telecommunications service line often crosses multiple allotments. In addition, if the service provider cannot obtain consent for the right-of-way from the majority of landowners, the provider is forced to install lines that go around the allotment, which is also expensive.

Rights-of-way can also be necessary to deliver energy to consumers. In September 2004, we reported that the Copper Valley Electric Association, a nonprofit rural electric cooperative, had been unable to reach agreements with several individual Alaska Natives for rights-of-way across their land.[27] In 1906, the Alaska Native Allotment Act authorized the Secretary of the Interior to allot individual Alaska Natives a homestead of up to 160 acres.[28] We found 14 cases where conflict exists regarding Copper Valley's rights-of-way within Native allotments. Resolution to a number of these conflicts had been intermittently pursued since the mid-1990s, but at the time of our report, only a few cases had been resolved using existing remedies. Copper Valley had three remedies to resolve these conflicts: (1) negotiating rights-of-way with Native allottees in conjunction with BIA; (2) relocating its electric lines outside of the allotment; or (3) exercising the power of eminent domain, also known as condemnation,

[26]25 C.F.R. § 169.3.

[27]GAO, *Alaska Native Allotments: Conflicts with Utility Rights-of-way Have Not Been Resolved through Existing Remedies*, GAO-04-923 (Washington, D.C.: Sept. 7, 2004).

[28]Act of May 17, 1906 (Alaska Allotment Act), ch. 2469, 34 Stat. 197 (1906), *repealed by* Alaska Native Claims Settlement Act, Pub. L. No. 92-203, § 18(a), 85 Stat. 688, 710 (1971).

to acquire the land.[29] We reported that Copper Valley had ceased trying to resolve these conflicts because it maintains that the existing remedies are too costly, impractical, and/or potentially damaging to relationships with the community. More importantly, Copper Valley officials told us that on principle they should not have to bear the cost of resolving conflicts that they believe the federal government had caused.

Section 1813 of the Energy Policy Act of 2005 required the Secretaries of Energy and of the Interior to conduct a study of issues regarding energy rights-of-ways on tribal land and issue a report to Congress on the findings, including recommending appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for granting, expanding and renewing rights-of-way.[30] Issued in May 2007, the study focused on rights-of-way for electric transmission lines and natural gas and oil pipelines associated with interstate transit and local distribution. The study recommended that valuation of rights-of-way continue to be based on terms negotiated between the parties and that if negotiations failed to produce an agreement that has a significant regional or national effect on the supply, price, or reliability of energy resources, Congress should consider resolving such a situation through specific legislation rather than making broader changes that would affect tribal sovereignty or self-determination generally.

Certain Issues Related to the Legal Status of Tribes May Complicate the Resolution of Disputes

The unique legal status of tribes has resulted in a complex set of rules that may affect economic development efforts. As we reported earlier this year, as a general principle, the federal government recognizes Indian tribes as "distinct, independent political communities" with inherent powers of self-government.[31] Therefore, Indian tribes have sovereign immunity as well as plenary and exclusive power over their members and territory subject only

[29]Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where they are located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee (25 U.S.C. § 357). Under Alaska state law a public utility may exercise the power of eminent domain for public utility uses (Alaska Stat. § 42.05.631).

[30]Pub. L. No. 109-58, § 1813, 119 Stat. 594, 1127 (2005). Tribal land is defined as any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under laws of the United States.

[31]GAO, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, GAO-11-252 (Washington, D.C.: Feb. 14, 2011).

to the limitations imposed by federal law. However, sovereign immunity may influence a private company's decision to contract with an Indian tribe and the limitations imposed by federal law on Indian tribes' civil jurisdiction over non-Indians on Indian reservations may create uncertainties regarding where lawsuits arising out of those contracts can be brought.

Like the federal and state governments, Indian tribes are immune from lawsuits unless they have waived their sovereign immunity in a clear and unequivocal manner or a federal treaty or law has expressly abrogated or limited tribal sovereign immunity. For example, the Indian Tribal Economic Development and Contracts Encouragement Act of 2000 requires the Secretary of the Interior to approve any agreement or contract with an Indian tribe that encumbers Indian lands for 7 or more years; however, it prohibits the Secretary from approving the agreement or contract unless it provides remedies for breaching the agreement or contract, references a tribal law or court ruling disclosing the tribe's right to assert sovereign immunity, or includes an express waiver of sovereign immunity. If the tribe does not waive its sovereign immunity in the agreement or contract, private companies might be hesitant to undertake the work because they will not be able to sue the tribe if any disputes arise. In addition to waiving sovereign immunity in agreements or contracts on a case-by-case basis, some tribes have formed separate entities to conduct business that are not immune from lawsuits.

The Supreme Court has ruled that, as a general proposition, the inherent sovereign powers of an Indian tribe do not extend to the activities of non-tribal members.[32] However, the Court has also recognized two exceptions to this general proposition: (1) tribes may regulate the activities of nonmembers who enter into consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements and (2) tribes may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe. In 2008, the Supreme Court ruled that a tribal court did not have jurisdiction to adjudicate a discrimination claim against a non-Indian bank brought by a company

[32]Montana v. United States, 450 U.S. 544 (1981).

owned by tribal members because neither of the exceptions applied.[33] The court's opinion focuses on the tribe's authority to regulate the bank's sale of fee land it owned within the reservation rather than addressing whether the tribal court had authority to hear the discriminatory lending claim under the consensual relationship exception. However, some private companies believe that this decision may not eliminate all of the uncertainty as to the nature and extent of tribal court jurisdiction that makes off-reservation businesses reluctant to trade on Indian reservations or with tribal members who live on reservations. For example, the brief filed by a railroad association asked the court to adopt a brightline rule that tribal courts may not exercise jurisdiction over claims against nonmembers absent clear and unequivocal consent to tribal court jurisdiction. The association argued that such a rule would ensure that litigation against nontribal members will be addressed by a forum that the nonmember has agreed affords acceptable law, procedure, and fundamental safeguards of process and fairness.

Special Provisions for Gaming and Small Business Contracting

In contrast to the unique issues that can cause uncertainty or pose challenges to economic activity in Indian country, tribes can take advantage of special provisions for gaming and small business contracting. Indian gaming, a relatively new phenomenon, started in the late 1970s when a number of Indian tribes began to establish bingo operations as a supplemental means of funding tribal operations. In 1987, the U. S. Supreme Court ruled that state regulation of tribal gaming would impermissibly infringe on tribal governments, thereby barring state regulation of tribal gaming in states which did not prohibit all forms of gaming.[34] In response, the Indian Gaming Regulatory Act of 1988 was enacted, which established a regulatory framework to govern Indian gaming operations.[35] In section 2(4) of the act, Congress found that a

[33]Plains Commerce Bank v. Long Family Land and Cattle Company, 554 U.S. 316 (2008). The non-Indian bank made operating loans to the company owned by tribal members and accepted the deed to the company's fee land inside the reservation but leased the land back to the company, with an option to purchase it at the end of the lease. The company did not exercise its option and the bank subsequently sold the property to non-Indians. The company then sued the bank in tribal court on a variety of claims, including claiming that the bank discriminated against the company because it had sold the company's land to non-tribal members on terms more favorable than those offered to the company. The tribal court awarded the company an option to purchase some of the land at issue, which effectively nullified the bank's previous sale of that land to non-Indians.

[34]California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987).

[35]Pub. L. No. 100-497, 102 Stat. 2467 (1988), *codified at* 25 U.S.C. §§ 2701-2721.

principle goal of federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government. To that end, the act generally requires that the net revenues from tribal gaming operations be used to (1) fund tribal government operations or programs, (2) provide for the general welfare of the Indian tribe and its members, (3) promote tribal economic development, (4) donate to charitable organizations, or (5) help fund operations of local government agencies. A tribe may distribute its net revenues directly to tribal members, provided that the tribe has a revenue allocation plan approved by BIA and meets certain other conditions.

According to the final report of the National Gambling Impact Study Commission,[36] gambling revenues have proven to be a critical source of funding for many tribal governments, providing much needed improvements in the health, education, and welfare of Indians living on reservations across the United States. The National Indian Gaming Commission reports that for 2009

- 233 tribes operating 419 gaming operations generated $26.5 billion in revenue (233 tribes represents about 40 percent of the 565 federally recognized tribes),
- the top 21 operations (or about 5 percent of all the operations) generated 38.7 percent of all the revenues, and
- the top 71 operations (or about 17 percent of all the operations) generated 69.5 percent of all the revenues.

In addition, in 1986, a law was enacted that allowed Alaska Native corporation (ANC)-owned businesses to participate in the Small Business Administration's (SBA) 8(a) program—one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals. This program allows the government to award contracts to participating small businesses without competition below certain dollar thresholds. Since 1986, special procurement advantages have been extended to ANC firms beyond those afforded to other 8(a) businesses, such as the ability to win sole-source

[36]The National Gambling Impact Study Commission, Final Report (Washington, D.C.: June 18, 1999). The National Gambling Impact Study Commission Act created the commission and required it to produce this report. Pub. L. No. 104-169, 110 Stat. 1482 (1996).

contracts for any dollar amount. In April 2006, we reported on the use of special procurement advantages by ANCs, and found that 8(a) obligations to firms owned by ANCs increased from $265 million in fiscal year 2000 to $1.1 billion in 2004.[37] In fiscal year 2004, obligations to ANC firms represented 13 percent of total 8(a) dollars. Sole-source awards represented about 77 percent of 8(a) ANC obligations for the six procuring agencies that accounted for the vast majority of total ANC obligations over the 5-year period.

ANCs use the 8(a) program to generate revenue with the goal of providing benefits to their shareholders, but the ANCs we reviewed did not track the benefits provided to their shareholders specifically generated from 8(a) activity. Thus, an explicit link between the revenues generated from the 8(a) program and benefits provided to shareholders is not documented. Benefits vary among corporations, but include dividend payments, scholarships, internships, burial assistance, land gifting or leasing, shareholder hire, cultural programs, and support of the subsistence lifestyle. The special procurement advantages for ANCs also generally apply to tribes and Native Hawaiian organizations (NHO). To obtain more information on the benefits these entities receive from participation in the 8(a) program, SBA recently promulgated regulations that require each 8(a) program participant owned by an ANC, tribe, or NHO to submit information showing how the ANC, tribe, or NHO has provided benefits to tribal or Native communities or tribal or Native members due to its participation in the 8(a) program.[38] The data submitted should include information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the ANC, tribe, or NHO to the affected community. We have ongoing work looking at the use of these special procurement advantages by ANCs, tribes, and NHOs.

[37]GAO, *Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight*, GAO-06-399 (Washington, D.C.: Apr. 27, 2006).

[38]76 Fed. Reg. 8222, 8264 (Feb. 11, 2011). Although the regulation, 13 C.F.R. § 124.604, requires reporting by each participant in the 8(a) program, the preamble to the regulation states that only parent corporations and not the individual subsidiary 8(a) participants will be required to submit this information. Generally, the new regulation became effective on March 14, 2011. However, SBA decided to delay the benefits reporting requirement to further study how the requirement could best be implemented without imposing an undue burden on ANCs, tribes, and NHOs. SBA has delayed the implementation for at least 6 months and noted that further delay may be necessary if the refinements to the requirement take longer than 6 months. 76 Fed. Reg. 8222, 8236 (Feb. 11, 2011).

Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

GAO Contacts and Acknowledgments

For further information about this testimony, please contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Jeffery D. Malcolm, Assistant Director; Jeanette Soares, and Joe Thompson also made key contributions to this statement.

Related GAO Products

Department of the Interior: Major Management Challenges. GAO-11-424T. Washington, D.C.: March 1, 2011.

Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts. GAO-11-252. Washington, D.C.: February 14, 2011.

Tax Expenditures: Available Data Are Insufficient to Determine the Use and Impact of Indian Reservation Depreciation. GAO-08-731. Washington, D.C.: June 26, 2008.

Federal Tax Policy: Information on Selected Capital Facilities Related to the Essential Governmental Function Test. GAO-06-1082. Washington, D.C.: September 13, 2006.

Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications. GAO-06-781. Washington, D.C.: July 28, 2006.

Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight. GAO-06-399. Washington, D.C.: April 27, 2006.

Indian Irrigation Projects: Numerous Issues Need to Be Addressed to Improve Project Management and Financial Sustainability. GAO-06-314. Washington, D.C.: February 24, 2006.

Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands. GAO-06-189. Washington, D.C.: January 11, 2006.

Indian Tribes: EPA Should Reduce the Review Time for Tribal Requests to Manage Environmental Programs. GAO-06-95. Washington, D.C.: October 31, 2005.

Indian Economic Development: Relationship to EDA Grants and Self-determination Contracting Is Mixed. GAO-04-847. Washington, D.C.: September 8, 2004.

Alaska Native Allotments: Conflicts with Utility Rights-of-way Have Not Been Resolved through Existing Remedies. GAO-04-923. Washington, D.C.: September 7, 2004.

Welfare Reform: Tribal TANF Allows Flexibility to Tailor Programs, but Conditions on Reservations Make it Difficult to Move Recipients into Jobs. GAO-02-768. Washington, D.C.: July 5, 2002.

Economic Development: Federal Assistance Programs for American Indians and Alaska Natives. GAO-02-193. Washington, D.C.: December 21, 2001.

Mr. LANKFORD. We look forward to that conversation. Thank you, Director.

Mrs. Douville, we will be honored to take your testimony now.

STATEMENT OF RODNEY M. BORDEAUX GIVEN BY PATRICIA DOUVILLE

Ms. DOUVILLE. Thank you.

Good afternoon, Mr. Chairman and committee members. On behalf of President Rodney Bordeaux of the Rosebud Sioux tribe and the Sicangu Lakota Oyate, I would like to thank you for convening this hearing on regulatory barriers in American Indian job creation.

The Rosebud Sioux Indian reservation is located in south central South Dakota. Our reservation consists of 900,000 plus acres of rolling prairie grasslands, rich for agricultural production and filled with other natural resources.

Our tribal president, Rodney Bordeaux, has now presided 6 years. The weight of his position bears heavily upon his heart. He has seen entirely too much poverty and tragedy on a daily basis among our people. This underlying poverty has caused many social ills and issues. Now it has become so pronounced that an air of hopelessness exists on the reservation, especially within our youth.

According to the 2010 census, the Rosebud reservation lies in the fourth poorest county in our Nation. With your help, we intend to change this.

Our natural resources here are many. We intend to use these resources to the best of abilities, from grazing cattle to farming leases along with timber production.

In the future, we seek to build our economy from the renewable energies that our resources provide, from wind development, hydropower, geothermal, to biomass into fuels.

The Rosebud Sioux tribe has been exploring the potential of wind power since 1998. In March 2003 we built a 750 kilowatt Neg Micon turbine capable of providing enough energy—electricity for 200 homes annually. We call this project the casino turbine project, because it is located next to our tribal casino.

This effort was accomplished through the assistance of a Department of Energy grant and a rural utility service loan through the U.S. Department of Agriculture. From this initial project, the Rosebud Sioux tribe accomplished a goal of having the first commercial sale of wind energy by a tribal government in the United States, and we are very proud to state that. Our partners in the accomplishment were Distributed General Inc. of Lakewood, CA [DISGEN], and the Intertribal Council on Utility Policy [ICOUP].

After our first project, we continued our partnership with DISGEN; and with their assistance we have applied for and were awarded a second DOE grant in 2003 to conduct all the preconstruction activities to develop a 30 megawatt wind farm near the town of St. Francis, South Dakota, on tribal trust lands, called the Owl Feather War Bonnet Wind Farm.

In 2008, 5 long years since the award, a FONSI was issued by the Bureau of Indian Affairs; and a grant of use and lease agreement with DISGEN and OFWB LLC was also provided by the BIA and the tribe. Despite insurmountable hurdles and delayed action

from BIA, we have had a shovel ready wind farm project since August 2008.

The remaining issue to overcome is the Power Purchase Agreement, PPA. This issue has severely tested the expertise of our developer, Dale Osborn of DISGEN, due to the uniqueness of the project being on tribal trust lands and the distance to electric loads.

Timing is an important issue in this matter, and the project needs to be ready when an RPF is posted. If the BIA did not take 18 months to approve the grant lease agreement, the project could have been operating and making a sorely needed revenue stream for the tribe.

We had two draft PPAs in hand, but due to the lack of wind experience within BIA and the BIA extensive timeframes, the RFPs for renewable energy from Basin Electric and then Nebraska Public Power District has expired. DISGEN's efforts to make this project succeed are undeniable; and they have, in my view, exhausted all efforts to work with NPPC and Southwest Power Pool to respond to all RFPs applicable.

Unless we sell directly to NPPD, the project cannot get built. Selling beyond NPPD, wheeling and tariff fee will drive the economics beyond the cost to build and repair the project, plus royalties. It is estimated that we can build this project at $66 million if the project can ensure a PPA at 4½ cents a kilowatt, escalating at 2½ percent annually with no wheeling or tariff fees imposed and only if we sell to NPPD.

A power purchase agreement is the only remaining significant issue that needs to be completed for OFWB. It has identified three Federal energy buyers that may apply for "double RECs" points toward the renewable energy goals of the Energy Policy Act of 2005: The first one is any Federal agency through the WAPA system that take can the energy from the St. Francis substation; the Omaha Public Power District that could sell the energy and renewable energy certificates to Offutt Air Force Base; and NPPD that could sell the energy and RECs to the Federal customers. This project can be constructed by the end of 2011.

The Federal Government can make this project happen if trust responsibility is exercised in good faith. We are not asking for moneys to fund this project. We are asking the Federal Government to assist us in efforts to secure a PPD, help us find this path.

We also ask that you live up to the doctrine of trust responsibility in assisting us to help ourselves in building our economy. Direct the Department of Energy to assist the Bureau of Indian Affairs to fine-tune and quicken the process of all economic development ventures on Federal Indian trust lands.

The current process is too time-consuming and bureaucratic, most often killing any project immediately, as most investors don't want a project to be collecting dust on BIA's shelf. This will eliminate an overly bureaucratic process to develop renewable energy. The Rosebud Sioux tribe intends to utilize the revenue stream from our commercial wind efforts to teach energy education, energy efficiency, and energy independence. The use of our natural resources will help our people in the tribe to build self-sustainable businesses from renewable energy sources.

The revenue brought forth will adjust our people's drastic need to upgrade our existing houses into energy efficient homes with renewable energy devices attached and to lessen our dependency on the larger electrical grid, along with the employment and businesses for our people.

Thank you for your time. I wasn't able to read the whole testimony, because it is quite lengthy, as you can tell. I was only speaking on one issue, but there are so many more that we have.

[The prepared statement of Mr. Bordeaux follows:]

The Rosebud Sioux Tribe

Testimony of Mr. Rodney M. Bordeaux, President,
Rosebud Sioux Tribe.

(As given by Ms. Patricia Douville, Council Member of the Rosebud Sioux Tribe.)

SUBCOMMITTEE HEARING on regulatory barriers to American Indian Job Creation.

Thursday, April 7, 2011
1:30 PM
Rayburn HOB – Room 2154

Good afternoon Chairman and Committee Members. On behalf of President Rodney Bordeaux, the Rosebud Sioux Tribe and the Sicangu Lakota Oyate, I would like to thank you for convening this hearing on regulatory barriers to American Indian Job Creation. My name is Patricia Douville and I am a member of the Tribal Council of the Rosebud Sioux Tribe and will testify today in that capacity.

The Rosebud Sioux Indian Reservation is located in South Central South Dakota. Our reservation consists of 900,000 plus acres of rolling prairie grasslands, rich for agricultural production and filled with other natural resources. We are one of the Seven Bands of Lakota that have survived in the Northern Great Plains from the natural resources given to us by Tunkashila, "Grandfather", through our Unci Ma'koce, "Grandmother Earth."

President Bordeaux has now presided for 6 years, three terms, the weight of his position bears heavy upon his heart. We have seen entirely too much poverty and tragedy on a daily basis among our people. This unrelenting poverty has caused many social ills and issues to become so pronounced that an air of hopelessness exists on the reservation, especially within our youth.

According to the 2010 Census the Rosebud Reservation lies in the fifth poorest county in our nation. With your help, we intend to change this.

The natural resources here are many and we do use these resources to the best of our ability, from grazing cattle to some farming leases along with some timber production. In the future, we look to building our economy from the renewable energy that our natural resources provide us, from wind development, hydropower, geothermal to biomass into fuels.

We have been exploring the potential of wind power since 1998, and in March of 2003, we did commission a 750kW, Neg Micon turbine capable of providing enough electricity for about 200 homes annually. This effort was accomplished through the assistance of a Department of Energy Grant and a Rural Utility Service Loan through United States Department of Agriculture. The Rosebud Sioux Tribe accomplished the goal of having the first commercial sale of wind energy by a tribal government in the United States and I am very proud to state this. Our partners in this accomplishment were Distributed Generation Incorporated of Lakewood, Colorado (DISGEN Inc.) and the Intertribal Council on Utility Policy, (ICOUP).

We continued our partnership with DISGEN and with their assistance we applied for and were awarded a $441,000 DOE grant in 2003, to conduct all of the pre-construction activities to develop a 30 Megawatt wind farm near the town of St. Francis, South Dakota on tribal trust lands, called the Owl Feather War Bonnet Wind Farm. In 2008, 5 long years since the award, a FONSI, a Findings of No Significant Impact, was issued by the Bureau of Indian Affairs, and a Grant of Use and Lease Agreement with DISGEN and Owl Feather War Bonnet Wind Farm LLC, was also approved by the BIA and the Tribe. Through what seemed to be some insurmountable hurdles, we have had a shovel ready wind farm project since August 2008.

The remaining issue to overcome is the Power Purchase Agreement, the PPA, and this issue has severely tested the expertise of our developer, Dale Osborn of DISGEN, due to the uniqueness of project being on tribal trust lands and the long distances to electrical loads. Timing is an important issue in this matter and a project needs to be ready when an RFP is posted. If the BIA did not take 18

months approving the Grant and Lease Agreement, the project could be operating and making a sorely needed revenue stream for the Tribe.

We had two draft PPA's in hand but due to the lack of wind experience within the BIA and the BIA extending time frames, the RFP's for renewable energy from Basin Electric and then Nebraska Public Power District (NPPD) had expired. DISGEN's efforts to make this project succeed are undeniable and they have in my view exhausted all efforts to work with Nebraska Public Power Company and the South West Power Pool to respond to all RFP's applicable. Unless we sell directly to NPPD, the project cannot get built. Selling beyond NPPD, wheeling and tariff fees will drive the economics beyond the cost to build and repay the project, plus royalties. It is estimated that we can build this project at $66 million if the project can secure a PPA at 4.5 cents a kwh, escalating at 2.5% annually with no wheeling or tariff fee imposed and only if we sell to NPPD. We are in the queue for this project on the NPPD 115kv line that runs from Mission South Dakota directly through the project site and down into Nebraska.

I present to you the Project Description provided by our Developer DISGEN Inc.

Owl Feather War Bonnet LLC (OFWB) proposes to develop, construct and operate a 30 MW wind facility to be located on Rosebud Sioux Tribal Trust Land on the Rosebud Indian Reservation. OFWB is solely owned by Distributed Generation Systems, Inc. (Disgen) in Colorado. The US Department of the Interior's Bureau of Indian Affairs (BIA) is the lead Trust Authority for this project and both the Tribe and BIA have authorized the 35 year Rights of Use easement for a wind energy project.

- An existing 115kV Nebraska Public Power District (NPPD) transmission line crosses the project area along with an existing substation serving the local cooperative. The transmission line is connected to the Mission Substation owned by the Western Area Power Administration (WAPA) to the north, and continues south into Nebraska to the Harmony Substation and beyond. NPPD has conducted transmission studies that support this project for up 30MW. **See Exhibit 1**.

- OFWB is located on Tribal Trust Land and permitting with the BIA has been **completed** under the National Environmental Policy Act (NEPA). Disgen completed and submitted an Environmental Assessment (EA) document for

review by all the parties in December 2007. BIA issued a Finding of No Significant Impact (FONSI) on January 24, 2008. Under the guidelines of 7 CFR Part 1794.14 and 1784.71, OFWB believes that all of the Federal Actions under NEPA have been satisfied.

- A wind resource assessment has been prepared for the OFWB. Five (5) years of wind speed data (5/15/2001 – 5/14/2006) were collected at the site and used to prepare the assessment. The project is projected to generate over 120,000 MWh using an American Manufactured Vestas V90 wind turbine.

Project Needs

A power purchase agreement (PPA) is the only remaining significant issue that needs to be completed for OFWB. OFBW has identified three federal energy buyers that may apply "Double RECs" points toward the Renewable Energy Goals of the Energy Policy Act of 2005

1. Any **Federal Agencies** through the WAPA system that could take the energy from the St Francis Substation.

2. **Omaha Public Power District** that could sell the energy and renewable energy certificates to the Offutt Air Force base.

3. **NPPD** that could sell the energy and RECs to their federal customers.

The project can be constructed by end of 2011.

The Federal Government can make this project happen if Trust Responsibility is exercised in good faith. You have a unique opportunity in this project to make this happen. We are not asking for monies to fund this project, we are asking the Federal Government to assist us in this effort to secure a PPA, help us find this path.

Will you live up to the Doctrine of Trust Responsibility in helping us help ourselves in building our economy? Give respect to our ancestors who signed the treaties in good faith. This is all we ask.

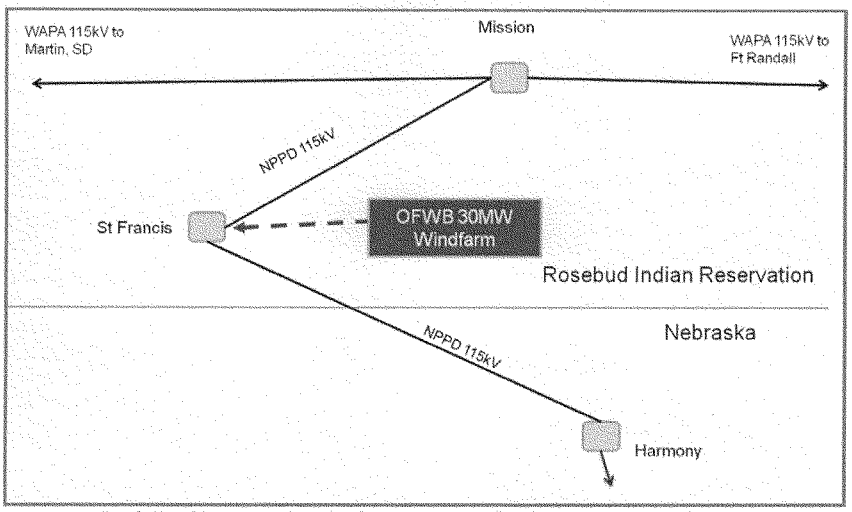
The Rosebud Sioux Tribe intends to utilize the revenue stream from our commercial wind efforts to teach energy education, energy efficiency, and energy independence by using our natural resources to help our people and the tribe build self-sustainable businesses from these renewable energy sources.

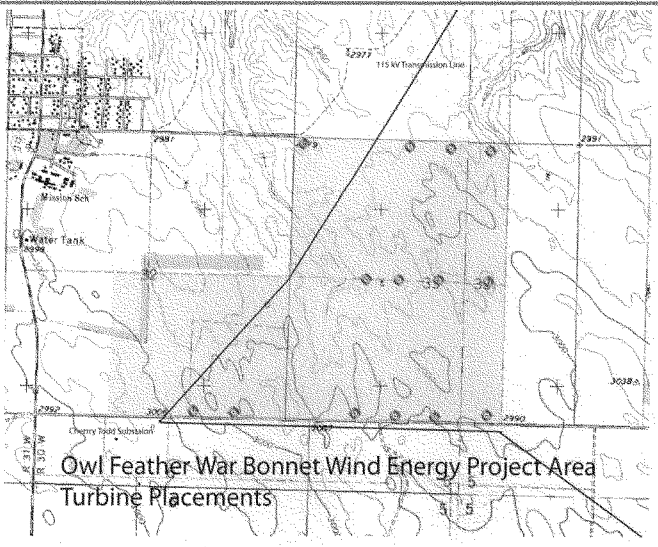
The dollars brought forth will address our people's drastic need to upgrade our existing houses into energy efficient houses with renewable energy devices attached, to lessen our dependence on the larger electrical grid along with employment and businesses for our people.

Thank you for your time.

Exhibit 1.

Provided by DISGEN Inc.





Mr. LANKFORD. We will have several questions for you, and we will be honored to have that testimony and put it into the written record as well.

Ms. DOUVILLE. Thank you.

Mr. LANKFORD. No, thank you very much.

Chairman Allen, I am honored you are here. Pleased to receive 5 minutes of testimony from you.

STATEMENT OF RON ALLEN

Mr. ALLEN. Thank you, Mr. Chairman.

Well, you have my testimony, and thank you for accepting it and putting it in the record.

Again, I am Ron Allen, chairman of Jamestown S'Klallam tribe located in western Washington State. I am also the treasurer for the National Congress of American Indians, and I have served in that organization for about 20 years. I've been the chairman for 34 years, and so I have been actively involved in Indian country from east to west, north to south. I probably have been on more Indian reservations than anybody, except maybe Senator Dan Inouye.

This topic of regulatory barriers for economic development and job creation in Indian country is a very broad category. In our testimony, we share with you the success of my tribe, 565 Indian nations in America. We are from small, like my tribe, to larger ones, like Rosebud Sioux; and we all have various different circumstances in which we want to advance our economic development and our independence.

The independent nature of the Indian communities is a longstanding historical relationship. The mere fact that there has become a dependency is not our fault. It is a fault of a system that is a historical system. So the question of the regulatory barriers is relative to what is the Federal Government's obligation and responsibilities via treaties and statutes and just moral, legal responsibilities to the Indian communities as governments in our political system. We think it is deeply rooted and curved back into the Constitution.

But we also feel that we have made great success as the U.S. Government has made a decision. Termination, assimilation are policies that don't work. Empowerment of tribal governments in our communities and our people in order to advance economic development does work, and you have seen in the last 25 plus years where it is becoming more and more successful.

You heard in previous testimony different examples and different areas that need some work. Fraud and abuse issues that are out there, yes, but relative to how the success is, it is a small area. So we don't want you to see a few small areas where we have gone awry and judge how well we are doing categorically across America.

Success is going exceptionally well in economic development, but we do have barriers. The GAO made the point of examples of access to finance. The Tribal Government Tax Status Act passed in 1984 created the authority of us to issue tax exempt bonds, to seek revenues in order to advance economic development in our communities. But it does not treat us the same as other governments. Well, that is not right. If you have cities coming in and they are

telling you we are not treated the same way as the States, you would create a fair playing ground for them. So access to resources and finances is very important to our communities.

The other comment that was made that you need to understand is other bureaucracies' impediments to us getting economic development or to our governments having stronger capacity. Well, the issue is, do they have the resources? So if you look at our political structure as governments, do we have the legal political infrastructure that is conducive to the private sector coming onto the Indian reservations and conducting business. So do they have recourse or do they have an incentive to come on—you know, tax benefits and things of that nature. Whether it is energy or whether it is creating widgets or whether it is advancing different resources—you have timber or, like in my area, fisheries industry—what is their incentive to come into our reservations and do business?

My tribe shows you that we can be successful. There are other tribes doing the same thing. We don't want you to be skewed by the gaming industry that has been quite successful, some of the tribes. Out of the 555, 230 or 240 are in the gaming industry. Out of that 230 and 240, there are only a couple—a triple dozen that actually are the really successful ones you hear about, not the majority. They are more break even, even though they created jobs.

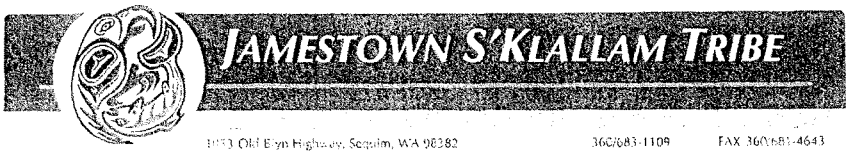
But what it has done that you need to understand is that it has created a new kind of resource made available to the tribal government they now can invest into their communities and diversify their economic development portfolio and do things that the Federal Government can't do. So you see areas where tribes are becoming more resourceful and more independent, self-governance, a legislation that is very effective in us negotiating for our fair share of the Federal system and let us manage it.

So if you ask yourself, how much would it cost us to help you become more independent? You don't have enough money. You don't have enough money to deal with America's problems today. We can't count on you to live up to those treaty commitments. But if you empower us, if you help us become stronger as government, we can get the job done and we can show you countless examples where it is working.

So I am just touching on a few of the issues, Mr. Chairman. This topic is a broad issue. There are people out there in the Federal system who are trying and they have their own constraints and there are regulatory impediments, no question about that, that should be removed. But the issue is can you count on us to become part of the health and economic fiber of America. Yes, for the most part, we are in rural America; and rural America is an equal part of the fiber of this Nation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Allen follows:]



UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM

Oversight Hearing on

"REGULATORY BARRIERS TO AMERICAN INDIAN JOB CREATION"

Thursday, April 7, 2011
1:30 PM

Written Testimony of
THE HONORABLE W. RON ALLEN, TRIBAL CHAIRMAN/CEO
JAMESTOWN S'KLALLAM TRIBE
AND
TREASURER OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the Jamestown S'Klallam Tribe, I want to thank this Subcommittee for the opportunity to provide testimony on this very important topic of economic development on Tribal lands. I am pleased to provide the following information and recommendations based on our Tribal experiences.

BACKGROUND

On February 10, 1981, the Jamestown S'Klallam Tribe was officially re-recognized by the United States government as a sovereign Indian Nation.

The Jamestown S'Klallam Tribe's Petition for Recognition, first filed in 1975, is a comprehensive history of Tribal life before settlers arrived, and the Tribe's subsequent interactions with the immigrant community and the United States government. It serves as a wonderful reference, and it clearly illustrated that in a practical sense, the Jamestown S'Klallam people had always been recognized, but simply lacked official status until 1981.

Not a Reservation Tribe

Federal recognition is important for Tribes because it formally establishes or reconfirms a government-to-government relationship. Status as a sovereign entity carries with it significant privileges. Federal recognition was the beginning of a new era for the Jamestown S'Klallam Tribe. With access to funding and services, and with increasing control over those funds and services as policies continued to shift in Tribes' favor through the last quarter of the 20th century, the Tribe's progressive approach has proven that a small Tribe can be a major force for good in the community – not only for Tribal citizens, but for the entire region. That success has led to a decreased dependence on federal funding, and the return of the independent, self-reliant nature that has always characterized the S'Klallam people.

Historically, the S'Klallam people received services through Indian Agents of the U.S. government and at the same time, pursued their own livelihoods as part of the Olympic Peninsula communities in which they lived. As the area became increasingly populated by non-Indians, the S'Klallam people transitioned from their traditional ways of life toward assimilation to settlers' ways, both economically (working on farms and in mills), and culturally (intermarrying with pioneer families). In 1874, several families who had been removed from their traditional village in Dungeness two years earlier pooled their money and purchased 210 acres of land (now known as Jamestown) along the Strait of Juan de Fuca north of the City of Sequim. Although the Jamestown people were never officially terminated as a recognized Tribe, reservation Tribes were receiving services that were being denied to those at Jamestown,

simply because they had steadfastly refused, on several occasions to move to a federally-established reservation.

In the case of the Jamestown Tribe, documentation of more than 125 years of correspondence on issues of compensation, education, health care and treaty rights proved that the U.S. government had always acknowledged them as a distinct people. And fortunately, winning their case for recognition and becoming an early participant in Self-Governance has enabled the Jamestown people to continue their traditions of self-reliance and progressive management. Today the Jamestown S'Klallam Tribe is a thriving Tribe held in high esteem by the larger community, locally, regionally and nationally.

Tribal Self-Governance

The Jamestown S'Klallam Tribe has always been progressive, a good example being when they decided to purchase land in Jamestown rather than move to a reservation. The Tribe's approach to any challenge has been to respond with the strength of creative ideas and steadfast determination. Receiving federal recognition was but another step in the Tribe's journey.

The Jamestown S'Klallam Tribe was the smallest of the ten Tribes to participate in the Title III Tribal Self-Governance Demonstration Project of 1988. As Tribal Chairman, along with the Tribal Council, we fought for the Tribe to be allowed to participate in the project, positing that the size of the Tribe should make no difference in its ability to manage its own affairs. According to the SGCE, Title III promoted Tribal control by:

- Allowing the transfer of management of BIA resources to Tribal management and control;
- Authorizing broad flexibility for Tribal utilization of those resources;
- Permitting Tribes to consolidate and redesign programs; and
- Replacing multiple BIA P.L. 93-638 contracts and grants with a single Annual Funding Agreement.

Self-Governance evolved from the vision of Tribal Leaders historically seeking to reduce or eliminate the bureaucratic control of the United States over Indian Tribes. Essential elements to achieve this objective include bringing decision-making authority and financial resources back to the Tribal level. The ability of the Jamestown Tribal Government to determine its own destiny, its own future, creates a more meaningful government-to-government relationship between the Tribe and the United States.

The Jamestown S'Klallam Tribe wholeheartedly embraced Self-Governance and has continued to "push the envelope" of what is possible under the authorities and flexibility provided under Self-Governance.

Here is just a sampling of the projects the Tribe engaged in between 1988 and 1995:

- Joined the Dungeness River Management Team, Puget Sound "Early Action" Watershed Management Plans, Dungeness Spring Chinook Restoration Program, coordinated development of the Dungeness/Quilcene Water Resources Pilot Project, became involved in many environmental projects including EPA wetlands, and clean water initiatives.
- Purchased three buildings for rental income.
- Purchased Northwest Corner Oyster Company and opened Dungeness Oyster House and JKT Oyster Farm on 23 acres of DNR tideland in Blyn.
- Purchased many parcels of land ranging from Diamond Point to the Dungeness River, focusing on Blyn.
- Joined in various litigation efforts regarding fin and shellfish harvesting rights.
- Approved submittal of dozens of grants for programs and services for the Tribe and the local community.
- Negotiated, along with 25 other Tribes, government-to-government relationships with the State of Washington regarding treaty rights.
- Passed dozens of resolutions leading to the establishment of 7 Cedars Casino, including Gaming and Liquor Ordinances, State/Tribal compacts, and HUD grant funding.
- Established the Jamestown Tribal Scholarship Fund and the Higher Education Committee.
- Established the Jamestown Library and Jamestown Chemical Dependency Program.
- Renamed the Tribe "Jamestown S'Klallam," as spelled in the Point No Point Treaty of 1855.
- Opened Northwest Native Expressions Art Gallery.

The Jamestown Tribe has been a leader in helping other Tribes become self-reliant by participating as an active member of the Self-Governance Communication and Education Consortium. I have been Tribal Chairman for 30 years and I have achieved recognition among my peers in Indian Country for my work to advance Native American issues in Washington D.C., Washington State, and even internationally.

Thus, the Jamestown S'Klallam Tribe has simultaneously grown programs and services for its own Tribal citizens while serving all of Indian Country at the state and national levels and

indigenous populations, worldwide.

Tribe's Comprehensive Plan Governance Goals:

1. Protect and Advance Tribal Sovereignty and Governmental Authority
2. Secure Tribal Self-Sufficiency/Self-Reliance
3. Improve Services and Programs
4. Expand Infrastructure

And the Tribe's Community Goals:

1. Good Health
2. Self-Esteem
3. Education and Learning
4. Employment/Employability
5. Cultural Awareness, Skills and Pride

Today, programs and services for the Tribal community reflect these goals. They include:

1. Over $400,000 annually in Higher Education Scholarships to Jamestown post-secondary students.
2. The Tribe's Housing Improvement Program and participation in Native American Housing Assistance and Self-Determination Act of 1996 has provided housing for Tribal families, and renovation and repairs for many Tribal homes.
3. The Tribe has participated in the Tribal Canoe Journeys since carving the canoe Laxaynəm in 1993. A second canoe, the E'ow-itsa was blessed and put into service in 2010. A Tribal singing and drumming group meets monthly. Classes in S'Klallam language and arts have been offered.
4. The Jamestown S'Klallam Tribal Library offers access to over 5,000 Native American print and digital media to the Tribal community and the general public.
5. Social and Community Services programs include Chemical Dependency counseling, Indian Child Welfare, assistance with nutrition and payment of utilities.
6. Health care benefits include the Tribe's ground-breaking self-insured Managed Care Program for Tribal citizens living in the services area, and out-of-area benefits for those farther afield. The Tribe's Community Health Program offers home care assistance for Elders, and education on diabetes management, smoking cessation and wellness.
7. Children, Youth and Teen programs include the Children's After School program for children aged 5-11; the Youth Leadership Program for middle school youth, and the Teen Career Exploration Program for high school students.
8. The Tribe also believes wholeheartedly in partnerships as a means to complete projects of mutual benefit to all of those involved. This has earned the Jamestown S'Klallam Tribe positive recognition as a cooperative participant in the environmental, health, civic,

educational, recreational and political arenas in projects including:

a. One of seven major partners in the $7 million Jimmycomelately Creek and Estuary Project to restore salmon and prevent flooding.
b. Partnering with Olympic Medical Center to open Jamestown Family Health Clinic to provide primary care to thousands of Native and non-Native patients in Clallam County.
c. Partnering with local and national Audubon Societies and the Rainshadow Foundation to found the Dungeness River Center at Railroad Bridge Park.
d. Contributing over $200,000 annually to local community causes including the Boys and Girls Club, Children's Hospital, the Peninsula Home Fund, and many non-profit organizations, educational organizations and recreational opportunities for children and youth.
e. Contributing land, design, equipment and labor to the completion of the Olympic Discovery Trail through Blyn, working with the Peninsula Trails Coalition and Clallam County.

9. Projects extend beyond Sequim, including:
   a. The Peninsula College Longhouse: The House of Learning
   b. The Longhouse at the University of Washington
   c. The Embassy of Tribal Nations in Washington, DC

The Tribe has also maintained active participation in many regional, national and international organizations, including the National Congress of American Indians, the Affiliated Tribes of Northwest Indians, the Northwest Indian Fisheries Commission, the Point No Point Treaty Council, and the Pacific Salmon Commission.

Economic Development

The Jamestown Tribe cannot provide adequately for its citizens with federal funds alone. As of 2010, the Tribe is the second largest employer in Clallam County, with a combined staff of over 600 people in Tribal government and businesses including the Jamestown Family Health Clinic, the Jamestown Family Dental Clinic, 7 Cedars Resort and Casino, The Cedars at Dungeness Golf Course, The Longhouse Market and Deli, Jamestown Excavating, Jamestown HomeBuilding, Jamestown Construction, JKT Logistics, JKT Industrial Services, Jamestown Mini Storage, Northwest Native Expressions Gallery and Jamestown Health and Medical Supply.

When I look to the future, I feel compelled to begin by reflecting on the past, from the early days where we literally had nothing to today with a strong and stable government base to serve our people.

We've made such significant progressive steps towards our goal of reclaiming our self-governing, independent nature and character. Even though we didn't have clarity about the goal at the start, the details of that independence have become clearer and clearer over the years.

The Tribe has always methodically 'chipped away' at addressing the different needs of our community and citizens and will continue to do so.

LOOKING FORWARD

- We will continue to reacquire a stronger, broader land base, for cultural preservation, housing, construction, natural resources and economic development. This is critical to the restoration of the Tribe's identity, and is essential to expand our business portfolio, serve our people through growing programmatic and service capacity. We are always looking at how to move toward establishing a self-reliant base that will always protect our interests.

- We will establish Tribal trust accounts (i.e. endowment funds) dedicated to specific purposes including housing, education, Elders, natural resources and culture, to grow and be protected in case of diminishing federal funds.

- We will continue to build a strong, stable and diverse economic base, managed with solid business principles and practices. Our economic vehicles serve the Tribe and the Tribe serves its community. Economic development is essential to our independence, which cannot be achieved without a strong revenue source. Although our focus today is on gaming and hospitality, we will continue to diversify into alternative business opportunities to build stronger economic resources in order to continue to diminish our dependence on the federal component of resources for the Tribe.

- We will continue to be progressively active at all levels of government in our approach as we protect our Tribal sovereignty, Treaty rights and advance our programs. Much of our success has come from staying politically engaged, informed and knowing what opportunities exist. Leaders need to be aware of the importance of staying active and involved at all levels – federal, state, inter-Tribal – in order to advance issues or initiatives forward.
- We have established a political foundation, a culture of being alert and engaged, moving in a focused direction without hesitation, which I hope will protect the Tribe regardless of the next leaders' styles or capabilities. What I have learned is that any entity or organization needs a consistent rudder – and only one rudder to steer the ship. Because of our very aggressive, assertive political persona, we have developed expertise within the staff that understand how the political system works. Whether or

not we have active political leadership in the future, we have built the infrastructure within our staff to provide the kind of oversight needed to anticipate what is coming.

- We will develop a stronger natural resources program, and continue to restore habitat. We will pursue new opportunities in shellfish production to assure that this traditional resource survives. As to fin fish, the base will always be small, but conservation practices are showing results for limited future opportunities.

- We will continue to grow cultural and traditional practices. The seeds that we have planted and continue to plant in our Social and Community Service programs are successfully rejuvenating our language, art and culture among our youth. We will continue to build an array of programs and facilities that enhance cultural and educational activities to return the S'Klallam identity.

- We will develop a flexible Elder support program. The challenge is to find a financial balance between culturally relevant assisted living and services for those who prefer to remain at home with family. We must always consider how we can take better care of our Elders and address their needs and lighten the financial load on families.

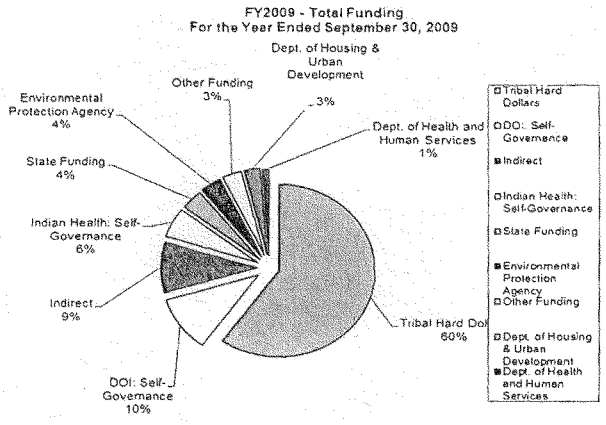
Our need will always be greater than the resources available. Our challenge will be balancing resources to address complex needs. We do that now, and will continue doing it in the future. For me, it's a rather encouraging future. I do not believe that we will rest on our laurels. ...we have strengthened our government, legal and political structures to function and act like a government intended to be effective and efficient, not bureaucratic and restrictive in choices and options. I have often described the Tribe as an unfinished painted canvas. The framework is there, but we keep adding (painting) the details, and this will continue for generations to come. It is a nation unfolding, continuing to realize its potential, and to strengthen its identity for future generations.

PARTNERSHIP AND COOPERATION

Jamestown S'Klallam Tribal accomplishments are a result of vision, a progressive attitude, hard work and a respectful relationship with the Federal government.

Federal program funding and guarantees have been critically important in support of developing an economic foundation. As an example, the Tribe's sources for funding are: A.) 9% indirect federal funds, B.) 28% direct federal grant funds, C.) 3% state grant funds and 60% Tribal hard dollar funds. The Tribal hard dollar funds are derived primarily from Tribal business. The direct federal grant funds are provided by agencies such as, the Bureau of Indian Affairs, Department

of Housing and Urban Development, Environmental Protection Agency, Indian Health: Self Governance and the Department of the Interior: Self Governance.



Here are examples of how two federal agencies have been important to the Tribe's economic development, which in turn has supported growth in Tribal Self-Sufficiency. ***The BIA loan guarantee program has been very instrumental in infrastructure. The SBA 8(a) program has provided the Tribe with a place at the government contracting table.***

- **Bureau of Indian Affairs**
  The Tribe currently has two BIA loan guarantees in place. These guarantees allowed Jamestown Properties, Inc. to construct needed facilities and create economic opportunities.

  The first BIA loan guarantee was used to guarantee a loan to construct two buildings on the Tribal campus. These buildings consist of the Community Center/Dental Clinic and the Social and Community Services Building.

  - The Community Center is the focal point of our Tribal campus and is used for Tribal events, as well as available for use by Tribal citizens. It is a building that brings great pride to the Tribe. The Dental clinic which is located in the lower level of this building has created economic opportunity not only for the Tribe, but for the Tribal citizens employed there. The dental clinic sees both Tribal citizens, as well as members of the larger regional community. It creates resources to help fund the Tribal citizen dental program. The clinic is also one of the few clinics in the area that provides services to Medicaid dental patients.

- The Social and Community Services building houses Tribal programs which have great impact to the Tribal citizens, these programs include youth, education, elders, and Indian Child Welfare.

Jamestown Properties also received loan guarantee to build the Longhouse Market and Deli.

- This building, which is leased to JKT Gaming, Inc., houses a unique and stunning gas station and market. The Longhouse Market has proven to be highly successful not only in operating profits for the Tribe, but also increase the Tribe's tax base. Proceeds from the cigarette tax compact with the State of Washington helps provide funds for government services, which are severely underfunded by the Federal government. Fuel tax compact funds are used for needed transportation infrastructure projects. The Market has helped the Tribe diversify its economic base by providing non-gaming revenues.

The BIA Loan Guarantee Program is a very important tool for raising the level of Tribal Self-Sufficiency.

- **Small Business Administration**

The SBA 8(a) program has been helpful to the Tribe's commercial construction company, JKT Construction. The program has provided the way for JKT Construction (JKTC) to seek federal government construction projects and to from a Mentor Protégé relationship that has provided training and joint ventures, which has allowed us to work on projects that we would not otherwise had the funding resources to handle.

- JKT Construction has successfully performed projects for:
  - The Air Force
  - The Navy
  - The Army
  - The Army Corp of Engineers
  - The Coast Guard
  - The Customs and Border Patrol

By participating in the SBA 8(a) JKTC has been able to gain experience that has led to a small level of bonding that allows JKT Construction to perform independently and or team with other companies. It has also led to other sources of business that do not require bonding, but are construction related. New companies are being formed to fit niches in laboratory furniture, fixtures and equipment procurement and industrial services. This is economic development that will assist the Tribe in moving toward its goal of economic Self-Sufficiency.

IMPROVEMENTS

Federal programs are important to all Tribes. Many programs allow Tribes to have a semblance of 'equal footing' when competing in the marketplace. If not for the BIA Guarantee Loan Program Tribes would not in most cases be able to get loans from the standard sources available to other entities and businesses. A great impediment for The JKT Construction company was lack of bonding availability, which would have allowed for far better use of the SBA opportunities, otherwise available. Bonding companies have been simply unwilling to provide bonding for Tribal construction projects.

- **Bureau of Indian Affairs**

  Continuation of the Loan Guaranteed Program is important to all Tribes. As I mentioned above,
  this important program has resulted in a very positive impact for Indian Country.

  The Bureau of Indian Affairs is engaged in a historic transition towards an agency that supports Tribal Self-Governance and economic development, rather than a bureaucracy that hinders that development. However, that transition is incomplete and Tribal Leaders welcome the oversight of Congress and this Subcommittee in ensuring that the BIA continues to make the necessary reforms.

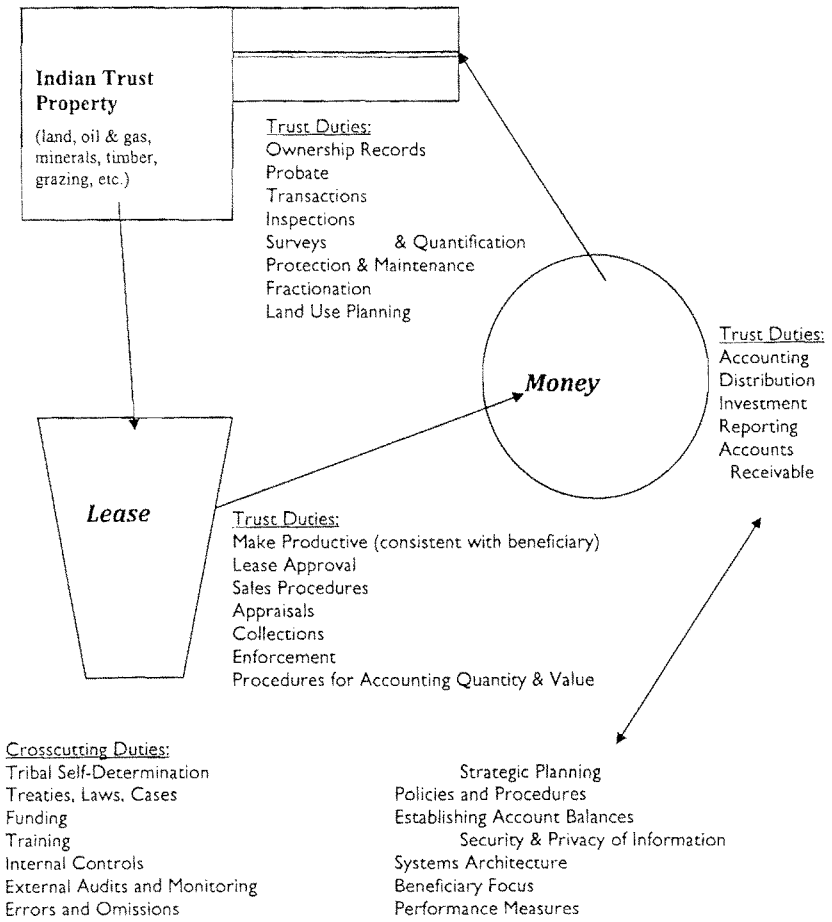
  I believe it is important for Congress to recognize that the Bureau of Indian Affairs is primarily a land management agency. It is a specialized type of land management, with the responsibility of holding 56 million acres of Indian lands in trust and managing them as a permanent homeland where Indian Tribal communities live and govern their own affairs. Of course the BIA has other functions such as law enforcement and education, but these activities are a part of the primary responsibility of protecting and managing Tribal homelands. Land management is the BIA's core mission and priority.

  Indian lands are held in trust by the federal government in order to prevent alienation and protect Tribal Self-Governance. However, the trust system has been distorted by a history of paternalism and it often hinders economic development. We are now in an era, after 40 years of Tribal self-determination, where Tribal governments are fully competent to make decisions without the need for the BIA to review and second guess every decision.

  I have attached to my testimony a simplified diagram of the BIA trust business cycle. This chart shows how most economic transactions work in Indian Country – starting with land and ownership, moving to land leasing and sales of natural resources, and then accounting and distribution of trust funds back to the land owners. Backlogs in one area affect the entire system. For example, in order to execute a lease, the BIA must have an accurate title status report and a current appraisal and may need a survey and an

environmental review. In order to get a title status report, the BIA may have to update the title with the results of probate decisions. A bottleneck at one step in the process causes multiple delays across the entire system.

Over the last fifteen years, a great deal of attention has been paid to the accounting part of the trust business cycle because of the litigation over Indian trust funds. However, in the big picture the basic BIA land functions of title, leasing, acquisitions and probate are even more critical to Indian communities because these functions drive economic development. Business transactions – from routine home mortgages to timber sales to large commercial deals -- require a degree of predictability and timeliness that is lacking from the BIA system. Tribal Leaders want to fix the BIA land system and we hope to work closely with Congress and the BIA in developing solutions.



Crosscutting Duties:
Tribal Self-Determination
Treaties, Laws, Cases
Funding
Training
Internal Controls
External Audits and Monitoring
Errors and Omissions

Strategic Planning
Policies and Procedures
Establishing Account Balances
Security & Privacy of Information
Systems Architecture
Beneficiary Focus
Performance Measures

Causes and Solutions of BIA Realty Backlogs

- The FY1996 budget cuts for BIA programs were implemented primarily by laying off realty workers in the field offices. The realty budget has never recovered from these cuts.
- The level of fractionation has increased dramatically, causing backlogs in probate and title that create delays in other parts of the land management system. Fractionation is also creating mounting costs in both management and losses in land productivity.
- In response to the *Cobell* litigation for a trust funds accounting, available resources have been shifted to the Office of Special Trustee, which has grown to a $150 million annual budget with resources largely taken from BIA realty.
- Indian Tribes have increased their economic activities, creating an increase in commercial leasing, land transactions and the need for appraisals.

Potential solutions include:

1) BIA realty needs more funding at the local level. In addition, BIA realty needs process and system improvements; recruitment and training programs for employees; and leadership to develop and implement a plan for business operations in trust management.
2) The BIA is currently considering changes to its leasing regulations found at 25 CFR 162. We are still reviewing these changes, but our initial response is generally positive. The draft regulations would establish timelines for approval, and would streamline the appraisals process. We are encouraged that the BIA is off to a good start, but we have also seen the bureaucracy grind to a halt too many times in the past to feel confident. We need to keep the pressure on to ensure that they continue to follow through with management reforms.
3) The $1.9 billion Indian land consolidation fund under the Cobell Settlement is a very positive development that should be used to significantly address the problem of fractionated land title. However, we are concerned that the Administration is not consulting with Tribal Leaders on how this massive land consolidation program will be implemented. Truthfully, we do not yet have confidence in the Interior Department's ability to manage this program, and we believe meaningful consultation and Tribal involvement is needed quickly.
4) Indian Tribes have strongly supported the HEARTH Act, H.R. 205 that is similar to the Navajo Leasing Act and would give Indian Tribes the ability to approve their own leases under Tribal government regulations. This is a step forward for Tribal Self-Determination and economic development, and we hope that Congress passes the bill very quickly.
5) The BIA has had a significant amount of leadership turnover in the last 20 years, but during intervals with better management we have seen the positive effects. When leadership sets clear priorities and goals for completing realty transactions, and implements oversight and accountability measures, we have seen better results.

Land to Trust Acquisitions

Tribal economic development is also heavily impacted by a lack of adequate land. Between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the Tribes, nearly 2/3 of all reservation lands, and sold it to settlers and corporations. The principal goal of the Indian Reorganization Act of 1934 (IRA) was to halt and reverse the abrupt decline in the economic, cultural, governmental and social well-being of Indian Tribes caused by the disastrous federal policy of allotment and sale of reservation lands. The IRA is comprehensive legislation for the benefit of Tribes that stops the allotment of Tribal lands, continues the federal trust ownership of Tribal lands in perpetuity, encourages economic development, and provides a framework for the reestablishment of Tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. 465, provides for the recovery of the Tribal land base and authorizes the Secretary of the Interior to acquire land into trust status for the benefit of Indian Tribes to assist in meeting the broad goals of the Act. Of the 90 million acres of Tribal land lost through the allotment process, very little has been reacquired in trust status since the IRA. Still today, a number of Tribes have no land base and many Tribes have insufficient lands to support housing and Self-Governance. Most Tribal lands will not readily support economic development. A fundamental purpose of the IRA in promoting land acquisition was to address the problem of scattered and fractionated parcels which often render the Tribal land base essentially unusable from a practical standpoint. And the legacy of the allotment policy, which has deeply fractionated heirship of trust lands, means that for many Tribes, far more Indian land passes out of trust than into trust each year. Section 5 imposes a continuing active duty on the Secretary of the Interior, as the trustee for Indian Tribes, to take land into trust for the benefit of Tribes until our needs for self-support and self-determination are met.

Despite this important purpose, land to trust applications often languish at the Department of the Interior. It is a chief concern of many Tribes with the existing land to trust process. Too often have Tribes spent precious time and scarce resources to prepare a trust application only to have it sit for years or even decades without a response. Such inordinate delay on trust applications often amounts to an unfair de facto denial of the request. In addition, during inordinate delays Tribes risk losing funding and support for the projects that they have planned for the land, and environmental review documents grow stale. Tribal Leaders' frustrations are heightened because the vast majority of trust land acquisitions take place in extremely rural areas and are not controversial in any way. Trust land acquisition is also necessary for consolidation of fractionated and allotted Indian lands, which most often are grazing, forestry or agricultural lands. Other typical acquisitions include land for Indian housing, health care clinics that serve both Indian and non-Indian communities, and land for Indian schools.

Tribal Leaders are encouraged that the BIA is making progress in expediting land to trust applications over the last year, but a new frustration has entered into the picture. The Supreme Court's 2009 decision in *Carcieri v. Salazar* has created a great deal of uncertainty and litigation over the long-settled ability of Indian Tribes to acquire land in trust with the Secretary

of Interior's approval. We need Congress to approve the "Carcieri Fix" and get this issue resolved, and we greatly appreciate Representatives Cole (H.R. 1291) and Kildee (H.R. 1234) for their efforts in sponsoring the legislation.

Environmental Review

One of the more burdensome requirements for many land transactions such as leases and acquisitions is the requirement that the application undergo an environmental review under the National Environmental Policy Act ("NEPA"). The Bureau of Indian Affairs does not have an adequate budget to perform environmental analysis, so these costs are most often pushed onto the Indian Tribes who are seeking to develop a project on their own lands. Even when these are environmentally beneficial projects such as a sewage treatment plant, the BIA and thus the Tribes must comply with NEPA.

On this issue, we encourage the Congress to increase the resources to the BIA for compliance with NEPA, which can be a particularly difficult burden for Tribes with fewer resources and larger land bases. In addition, we believe that it is appropriate for Congress to consider relieving Tribes of some of the burdens of NEPA when Tribes are developing beneficial projects such as schools and clinics and other important community infrastructure. We do not believe that NEPA was ever intended to be a barrier to needed development of Tribal lands by Tribal governments where there is no real federal action other than a pro forma land transaction approval.

Finally, we recommend that the Department consider utilizing a categorical exclusion in its Departmental Manual for land transactions that do not involve a change in use. The BIA has a categorical exclusion for "Approvals or other grants of conveyances and other transfers of interests in land where no change in land use is planned," 516 Departmental Manual 10.5.I. This categorical exclusion can and should be extended to conveyances where no change in land use is planned. Most transactions are agricultural and timber lands that have been used for the same purposes for many decades. In such cases, no change or environmental detriment to the land would occur. As a result, it makes good policy sense for transfers of such lands to benefit from the same categorical exclusion as other transfers of interests in lands which will have no adverse environmental impacts.

- **Small Business Administration**
  The Tribe receives knowledgeable support from our local office. However, on regional and national levels, the SBA is severely limited in meeting our needs for assistance and guidance. With a few exceptions, the SBA lacks qualified resources at both levels. Unfortunately, those exceptions are over-worked, under-resourced, and set up to fail. Many of the federal interfaces for such entities as the CCR's, ORCA, IRS, and other related agencies which coordinate data or systems with the SBA do not appear to be trained sufficiently to understand the nuances of Tribal business entities. This lack of adequate support results in a waste of precious resources for the SBA and small

business due to re-work of applications, reporting, and research to "discover" what "works" and creation of ad hoc "work-arounds". As a business development agency, the SBA is supposed to be pro-active, but today it is in a position of being reactionary. The result is failure to anticipate significant issues for Tribal entities and its own staff.

The SBA attempted to help in the bonding arena by providing a 'bonding guarantee program.' This was a good idea, but bureaucratically unacceptable to Sureties. The SBA list of participating "approved" agents/sureties appears too comprehensive. The Jamestown experience is that few sureties on the list are actual participants. The encumbrance for active participation is that the "guarantee" is seen as not a full guarantee of payment due to bureaucratic process. It causes substantial uncertainty in the process itself, and a lack of timeliness in payment. That same timeliness issue is found on the front end, as well. It takes too long to get a commitment. When it comes to bonds, time is of the essence. Additionally, there is financial disincentive due to the fees charged by the program. So, the Surety has to dedicate more time to the process which means the cost goes up and the Surety makes less money. The price goes up for the small business entity and it becomes less competitive. Finally, if there is a claim, the money is not readily available for the Surety to take quick action in order to reduce the loss.

CONCLUSION

The Federal funding system is a critical support for Tribes. You can see how it has contributed to the success of the Jamestown S'Klallam Tribe. You can also see how much more the Tribe could have accomplished with additional provider knowledge and awareness. Self-Governance, self-determination and Self-Sufficiency are critically important to the Jamestown Tribe and to all Native American Tribes. It is essential the federal government system supports and assists Tribes in developing sovereign governmental political and legal foundation. Tribes attract non-Indian private sector investment in Indian communities when Tribes have constitutions, laws, courts and ordinances, as well as separation of business and government.

Again, thank you for the opportunity to provide testimony on this important issue to future of Tribal Self-Sufficiency, Self-Determination and Self-Governance.

Mr. LANKFORD. Thank you very much for your testimony.

Let me run through just a few questions that I will have and briefly get some more context on it.

Chairman Allen, are you on a reservation tribe or nonreservation tribe?

Mr. ALLEN. I am a reservation tribe. I am a small reservation. We own about a thousand acres. Of that thousand acres, we have only about 35 actually in reservation status.

Mr. LANKFORD. OK. So the other—so you have a thousand acres there. Thirty-five you're saying is in trust, is in reservation status; that what you are saying?

Mr. ALLEN. Yes. And we have a lot of land that is in the process—it was noted earlier about the land in the trust process that had an impediment because of the Carcieri Supreme Court decision. Once that is removed, then it opens up that opportunity for that trust status, and many of us will reacquire it, whether it is a "checkerboard" reservation or whether it is on a reservation like ours trying to strengthen our homeland base.

Mr. LANKFORD. OK. You mentioned, Chairman Allen, about empowerment's better than forced assimilation. Can you give me a specific example of what you would say, this is empowerment? What would be helpful?

Mr. ALLEN. Relative to the assimilation policy?

Mr. LANKFORD. No, no, no. You were saying empowerment is better than forced assimilation by far. So what I am looking for is a specific example of what you mean.

Mr. ALLEN. Probably the one that comes quick to mind is, as a government, if the government—even though we have individuals we are trying to enhance with regard to their business, as governments we have no economic base so we have no revenue base. So our revenue base is based on the businesses that we generate. So if we're going to become independent from the Federal Government and become less dependent on it, then that base has to be the foundation for these unrestricted resources that deal with the unmet needs in our community.

Mr. LANKFORD. OK.

Mr. ALLEN. And so the issue for us would be the government has to have the authority that resource is tax exempt. The rules, the laws that recognize that unique stature of tribal corporations and the revenue generated by it and the IRS recognition of those, that authority, is a big deal to us and as well as the authority—the unencumbered authority to secure tax-exempt loans for economic development.

Mr. LANKFORD. Thank you.

Ms. Kendall, can I ask you a question about fractionalization that came up earlier? Is there a list that is available to the tribes of the land that is currently going through—obviously, people are being contacted now based on what just occurred last year and the purchase of lands and people are being contacted to see if they want to be able to combine that out, correct?

Ms. KENDALL. Is your question are people being contacted?

Mr. LANKFORD. Well, yes. That is going on currently, is that correct?

Ms. KENDALL. I believe so.

Mr. LANKFORD. The question that I have is, are the tribes made aware, because if the land is purchased back then it is ceded to the tribe, is that correct, as trust lands?

Ms. KENDALL. That's my understanding.

Mr. LANKFORD. Will the tribes be aware that this land is in process? Is there any system that you know of that is in place out there so the tribes know here is the land going through the process and there are 10 that are still interested and 20 that are not in the purchase process.

Ms. KENDALL. What my understanding is, is the Department has presently a program that addresses fractionation. It's been a very small program up until the promise that the Cobell settlement has. The Department for a number of reasons had not put a plan in place until the approval goes through. They are thinking about it. They are talking internally. But they have not done the kind of proactive communication, I guess because they don't want to sort of preempt the finalization of settlement.

Mr. LANKFORD. OK, thank you. The question that we will try to ask them directly on that and be able to track down that.

Director Mittal, a question for you on just dealing with the dynamics of all of these issues that you are raising. You raise some terrific issues on how did we get involved in this. Some of this boils down to BIA really has a responsibility to help businesses know how to navigate through Indian law and dealing with their court systems and unique dynamics of that so businesses will not feel prohibited to be there. They will be encouraged to be there, and someone can help them navigate through that.

Do you see anywhere out there a process that's in place from BIA to say we are going help any business, whether it is a McDonald's or whether it is a company that builds widgets, as Chairman Allen mentioned before, that wants to be able to come here so that someone will help them through that process? Does that kind of program exist?

Ms. MITTAL. I am not aware of such a program—such a comprehensive program. There might be individual programs for specific parts within BIA, for example, to help them navigate the judicial system and things like that, but I'm not aware of a comprehensive program like you just described.

Mr. LANKFORD. Ms. Kendall, are you aware of any type of program like that would help outside businesses that want to be able to invest in tribes know how to be able to navigate the process?

Ms. KENDALL. I am not, sir.

Mr. LANKFORD. That is one—we will try to be able to followup on that one as well.

Director Mittal, you had also mentioned the patchwork of environmental standards. Can you talk about just the relationship, the States—the State, the tribe, and the Federal all trying to work together, has that become an issue for businesses being able to come in? And what are the solutions that are being formed on that? Who's finding a way to solve that, I guess I should say, or a success story?

Ms. MITTAL. We haven't actually looked at the relationship between those tribal standards and businesses. What our past work has looked at is the conflict that creates between the tribal govern-

ments and the States. So those are the issues that we have seen that, in the past, that because the tribes have this authority under the three acts they have created conflicts with the States. For example, States don't like the fact that the tribes are setting standards that are more stringent than the State standard. So that's the area we have focused on. We haven't done any extensive work looking at the effect it has had on businesses.

Mr. LANKFORD. Thank you very much.

I am out of time, and I recognize the ranking member, Mr. Connolly, for 5 minutes of questioning.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I see we have been joined by our full committee chairman. I would be happy to yield to him, reclaiming my time when he is finished.

Mr. ISSA. That is very generous. The ranking member knows that I generally am afraid to ask questions and then move to another subcommittee. So very wise of you, Gerry. But thank you.

I'll be brief. I've got just a couple of questions, and they are sort of between the two government entities here.

Ms. Kendall, you produce IG reports and conduct audits and investigations, report your finding to the BIA. Is BIA responsive to the information you are sending them?

Ms. KENDALL. Not always. We do get responses primarily on the audit side. We request responses from investigations that we provide to them.

Mr. ISSA. Why do you think they don't respond with some predictability?

Ms. KENDALL. I wish I knew the answer, Mr. Chairman. I simply don't. One of the feelings we get in the Office of Inspector General is they are simply outwaiting us.

Mr. ISSA. Hmm. You know, one of the things we like here is that it is harder to outwait us. So it is an area we do want to ask you to submit a good subsegment of ones that you feel that you need a response for, haven't gotten a response, or at least it would be helpful, and let us know about them. Because we probably, in most cases, want to know as badly as you do and will be able to ask independently. Quite honestly, those would help educate us.

The chairman, the question that was actually more directed toward our U.S. Government representatives, but I would ask you, do you think there is any way that your tribe could navigate through business attempts with the current BIA support? Meaning, if you didn't hire your own lawyers at whatever expense you have to pay for specialists that understand the tribal process with BIA, do you think there is any chance you could do it without that expense?

Mr. ALLEN. Yes.

Mr. ISSA. Do you do it?

Mr. ALLEN. We are doing it.

Mr. ISSA. Including land-in-trust applications.

Mr. ALLEN. No, the land in the trust is a Federal function that we can't do. There are components of that process that we could do, if they would accept it, including the environmental review process. We do a lot of that for them. So that's where a lot of the Federal functions can be taken over by us that aren't essential Fed-

eral functions. That would make the process move much smoother and much faster.

Mr. ISSA. Let me do one followup question for either of the tribal members. I have worked on land in trust for a number of the tribes in my district and around the area. And even, for example, when BLM is begging the tribe to take land that they don't have the funds to maintain, that are not developable but they have ancestral significance, we go through a long, multiyear process to get it in trust. And so even when it is in the Federal Government's best interests to deliver it, even when the tribe is willing to pay for the future maintenance, etc.—because I have some well-to-do tribes—you can't get the process quickly, in concert with the Natural Resources Committee, obviously the committee of primary jurisdiction.

I would ask all of you, do you believe that what we should be doing is to come up with greater master plans of the aspirations of tribes, commit land-in-trust designations so that if fee land is acquired at any time it has already gone through the process in a master plan, the same way as a city often doesn't have all of its territory filled out, but it will stake the claim to that. I would take it from both sides, if you could, because it's an area I have never been able to move along, but that I think would be part of that changing of it. If you could literally clear those areas of aspiration so that then when they become available through fee or other purposes you could acquire them.

Please, Chairman.

Mr. ALLEN. Well, first of all, the answer is yes, that most tribes have a comprehensive land use plan that usually includes their existing reservation and their ceded territory where they resided. And it can be a little complicated because in many of our communities it overlaps into our sister tribes. So we have to be respectful that our comprehensive plan, land plan, we want to acquire lands for multiple reasons—economic development, cultural reasons, natural resources, etc.—that may overlap.

Some areas very clearly is in our territory of the tribe, but some will overlap into other territories that our sister tribe will have an interest in, and we have to resolve those issues.

But there are some issues within the process that we have to be careful. The U.S. Government does not want to take land into trust. If there is any liability—I mean any liability—it will not take any land in trust. So we have to go through—that's why sometimes the process takes a long time.

There may be something identified, environmentally or so forth, that the U.S. Government says we have a problem. Until we get that resolved so that I have absolutely no liability, this land will not be taken into trust. That has been the biggest hiccup in the process—the Carcieri problem that we currently are emerging.

Many tribes do not have that comprehensive plan in place, and they should be encouraged to do that. Because their ceded territory is often much greater than their reservation base.

Mr. ISSA. My time has expired.

In the case of California, where they lost all of their ancestral tribes, they were part of the mission system in most cases, and even if they got it they were often checkerboards where these fell

out during the allotment period. That's the area we have dealt with a lot, where when you buy a piece within your contiguous border you still have to go through an extensive and expensive process to get it in trust.

Any other comments? Because my time has expired. But if there is anything else the committee should know about expediting that process in order to allow for, particularly, beneficial use?

Mr. Connolly, I am in your debt. I yield back.

Mr. CONNOLLY. Thank you, Mr. Chairman.

With the permission of the chair——

Mr. LANKFORD. Absolutely. I thank you for your courtesy on that.

Mr. CONNOLLY. Absolutely.

While the chairman is still here, I would like to followup on his question to you, Ms. Kendall. I am not sure I understood your answer.

You responded to Chairman Issa, when he said are you getting cooperation from BIA, you seemed to suggest no, and you seemed to suggest the reason you were given or the reason you understood that lack of cooperation was they were waiting you out. A, what kind of cooperation are you getting or not getting? How have you communicated to them that won't be acceptable? And "waiting you out" meaning what? You are the Acting Inspector General and maybe when they get somebody else, he or she will be friendlier?

Ms. KENDALL. No, not at all, sir. This has been a longstanding problem with BIA. And much of it has—not necessarily with our audits or investigations, but we refer a lot of allegations that we receive back to bureaus, and we do that with BIA as well. We probably receive—almost 50 percent of the allegations we receive relate to BIA. And so——

Mr. CONNOLLY. The whole Department of the Interior?

Ms. KENDALL. Yes. And so a good portion we will not investigate ourselves or conduct an audit ourselves.

Mr. CONNOLLY. Could I just interrupt you one more time just to make sure we all understand what you are saying. Fifty percent of the allegations—allegations implies fraud or a crime.

Ms. KENDALL. Allegations of wrongdoing one way or the other, yes. So I can say affirmatively that, in the matters that we refer to them to respond to themselves, they have been very lacking in getting back to us and being responsive. And, in fact, we have just really, in a sense of frustration, decided we will close these matters out as nonresponsive and start reporting them to Congress in our semiannual report.

Mr. CONNOLLY. Thank you. And you are the only IG with jurisdiction over the BIA?

Ms. KENDALL. Yes, sir.

Mr. CONNOLLY. Thank you.

Chairman Allen and Ms. Douville, please feel free to comment as well, if you wish.

I just want to tick off some of the items that were cut or eliminated in H.R. 1, the continuing resolution passed by party line vote here in the House:

$581.3 million reduction for the State and local law enforcement assistance account which tribal courts and detention facilities receive funding from.

$17.9 million reduction to Office of Special Trustee for American Indians.

$9 million decrease to the BIA construction account.

$900,000 reduction to the Indian land and water claim settlement miscellaneous payments account.

Reductions proposed for Labor, Education, Health and Human Services serving American Indians, Alaska natives, including Head Start, tribal colleges, Native Americans serving nontribal institutions, tribally controlled postsecondary vocational institutions, and the list goes on.

A decrease of $139.3 million to the IHS facilities account, which also affects tribal lands, and $200 million in reductions to the Native American housing block grant program.

Would those reductions have any impact at all on the quality of life on reservations or tribal lands?

Mr. ALLEN. Yes, absolutely. You know, there is no community in America that is more underserved than American Indian communities. All you have to do is look at the fact that our average unemployment rate in Indian country is in the mid-30's, just average. You go to Rosebud and Pine Ridge and some of these other communities where it is in the 70's and 80's. It is ridiculous.

The fact that these Head Start programs or these school construction programs or roads programs or the reduction of loan guarantee programs—all disincentives to invest in our Indian communities. We don't have the physical infrastructure to take care of our it community needs.

So it is not just about economic development. It is the community infrastructure to be able to take care of our families and our kids and to educate them and enhance their abilities, to care for their needs.

Public safety, you want to talk about public safety issues? You must know about the atrocities going on in our communities. The violence against Indian women and families and our kids is just terrible. It is just a sad commentary of what is going on in society.

So we know that Congress is wrestling over the deficit reduction, but we can tell you when you look at the $3 trillion budget relative to where we are, the Indian communities, the resources—the limited resources is a drop in the bucket. And we know they are shaving them everywhere they can.

So I am telling you it is going to have a serious detrimental impact to what marginal success we achieved in the last couple of years. It has been stagnant. If you look at the budget and the way we have been moving forward, the most significant increases are in health care. But even in the significant increases in health care you can see the fact that we are still way behind when you measure every health care category, that you measure the health status of our communities and our people from the kids to the elders. And so it is a struggle for us.

We see those programs—HUD program, go after a whole bunch of programs, community programs and economic development programs, natural resource enhancement programs, etc., that are out there. Each one of those programs all make a difference in our communities; and we are pushing to become stronger, more vibrant. They all contribute and interface and are interrelated.

So the answer is, yes, it is a detriment, a setback. It is disappointing.

Because we think we are getting traction with Congress, and we think Congress is listening to us, that we have some problems and needs, you know, in appropriations. The chairman says, we have a problem here. We are underserving Indian communities so we are going to hold the line. We are going, yes, hold the line, but also we are missing some serious needs here. Whether it is Interior or HUD or DOL or Labor or Commerce, each have a role in enhancing the welfare of our governments and our communities.

Mr. CONNOLLY. Thank you.

Ms. DOUVILLE. Yes, all these cuts in H.R. 1, they are highly devastating to our tribes, especially to mine. Historically, we have never been funded at 100 percent; and that is the government trust responsibility to us.

Cutting the housing, the IHS, we have programs that need this money. We have kids, children that depend on a lot of this. And that is our future. That's what we consider sacred, is our children. And cuts like this make it so hard, make it even harder for us. And the hopelessness that I have talked about earlier, it just pronounces it more.

So with these cuts, if the government would live up to their trust responsibility, give us the 100 percent that we need and we are asking for, then we won't be a burden, and that would empower us to be just as equal as any other Nation within our Nation.

So, yeah, this will hurt us, and it is going to hurt us. But we are strong. We will survive. We survived for hundreds of thousands of years. But with your help our quality of life would be better.

Mr. LANKFORD. Ms. Kendall, earlier, you were talking about some of the issues of waste—sorry, I was referencing—Mr. Labrador. I apologize for that. Mr. Labrador.

Mr. LABRADOR. You are fine, Mr. Chairman. I actually yield the time to you.

Mr. LANKFORD. Thank you.

You referenced earlier several issues that were coming up where funding had been allotted. As I recall, you referenced a 48 percent increase in funding for detention centers. Than when you went back years later there was no change. Are there instances where funding is being allotted, how is that used? What are you finding in these situations?

Ms. KENDALL. The matter I am referring to specifically had to do with staffing in Indian detention centers. And, as a result, I believe in part of our 2004 report where staffing was one of the multiple concerns, Congress appropriated BIA a considerable amount of money—I think a 48 percent increase, about $62 million or so. And what our effort was was to go see how they spent that money; and, unfortunately, we could not determine how they accounted for it. And very little, if anything, was done to improve staffing.

Mr. LANKFORD. The frustration that is experienced here is that there are so many different variant issues that we are dealing with. There is just a multitude of both legal—with land issues, with relationship issues with cities and with States and with the Federal Government that we are making job creation incredibly complex.

And the greatest need that I see on the outside of this, and that is why I am asking coming in, is not necessarily additional dollars. It is the capacity for jobs to grow on their own and to be, as you mentioned before, Chairman Allen, self-sustaining and not be dependent, but to be a fully functioning national economy within the system that is functioning there on the tribe. To where tribes, as you mentioned before, the 230-some odd tribes that run casinos, great, they are running a functioning business, whether that be a wind farm to try to figure out the process of how to get that up so it can be sold and so that jobs can exist there, or whether that be a functioning business that is high tech, low tech, manufacturing, whatever it may be. We have to figure out the systems and the processes that need to be in place so that this can thrive on its own.

Let me ask you, Ms. Douville, the type of jobs that exist among the tribe and on tribal lands, you mentioned the wind farms, great. You mentioned the casino that you have. What other jobs and industries or business that are there onsite?

Ms. DOUVILLE. Right now, we have a lot of convenience stores, grocery stores, schools. Our tribal government, of course. And we employ about 500 to 600 people on the reservation.

Mr. LANKFORD. Through the tribal government?

Ms. DOUVILLE. Through the tribal government.

We also have the Bureau of Indian Affairs, our agency there. I am not sure how much they employ or how many of the employees are Native American.

Mr. LANKFORD. How many members of the tribe that live locally?

Ms. DOUVILLE. That live locally? Approximately 30,000.

Mr. LANKFORD. OK.

Ms. DOUVILLE. For our tribe.

But one thing that is highly pronounced on our reservation is that our unemployment rate is above 85 percent. So a majority of our people are unemployed. A lot of them are trying to be self-employed with the arts and crafts and the resources that we do have and the talents that they do have to try to get some type of business off the ground. Yet, still it is hard.

Mr. LANKFORD. Sure. Obviously, we are scratching the surface. This is an initial hearing, and that is what this is, is fact-finding and hearing and to initiate the process and then to disburse this to other committees that are engaged with directly on it. You have identified multiple areas, both written and orally, on it. If there is one area to look at and say this one has to be resolved first, could you identify one to say this is the key that has to be resolved first from the Federal Government side, to make sure that we are pulling back any impediment to job growth within any of these tribal areas?

Ms. MITTAL. I will go first.

I think the land-in-trust issue has to be resolved. Because until the tribes have a secure land base, they cannot undertake the type of activities that the two tribal members have talked about. They cannot conduct grazing, they cannot conduct forestry, they cannot conduct business or gaming activities. They need to have a secure land base.

And until this uncertainty that the Carcieri decision has created is resolved, what we are concerned about is that more and more tribes are going to come to Congress looking for legislative solutions to this problem, rather than going through the BIA application process.

Mr. LANKFORD. How do you see that being resolved? Is there something that you look and say this is going to have to be resolved here?

Ms. MITTAL. I think there could be legislative solutions. There could be court decisions that help resolve it. But there are lots of different ways it can be resolved. It is a definitional issue. We need to know what exactly does it mean by Federal jurisdiction in 1934. So that could be resolved either in the courts or by Congress.

Mr. LANKFORD. Well, the courts are down the streets, so we will have to resolve it with legislative solutions here.

So I appreciate your testimony and your time, and other folks that are here, and would be very pleased to be able to receive, if you have additional comments and thoughts that you may have that you want to be able to submit to Congress for us to disperse to the other areas, you have 7 days to be able to get those things back to us. So as things come up, we will be very pleased to be able to contact you with followup questions as they come up from there.

I am very grateful for your time, and I apologize that we had a vote right in the middle of it and much delayed the process we were going with.

Unless there are additional thoughts and comments on it, this hearing is adjourned.

[Whereupon, at 4:12 p.m., the subcommittee was adjourned.]