



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

MAR - 5 2018

The Honorable Doug LaMalfa
Chairman, Subcommittee on Indian, Insular
and Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to the questions received by John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, after his appearance before your subcommittee at the legislative hearing on tribal recognition bills.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Norma Torres
Ranking Member

Questions from Chairman Bishop

- 1. According to your statement, “Historically, federal recognition of Indian tribes was not grounded solely in delegated authority from Congress.” Treaties, as well as statutes providing for the recognition of tribes, obviously are congressional actions. The regulations in 25 CFR Part 83 (Federal Acknowledgment of American Indian Tribes, or “Part 83”) cite the statu[t]es that the Bureau of Indian Affairs (BIA) says delegated the BIA authority to promulgate them. What are the other ways to recognition that do not involve Congress, and what is the legal authority for those ways?**

Historically, government-to-government relations with Indian tribes were recognized through the Treaty Clause of the Constitution, through Executive Branch interactions and dealings with tribes pursuant to the Indian Trade and Intercourse Acts, and as part of the Executive’s responsibility for the safety and wellbeing of the Nation. Where treaties were negotiated by the Executive, they were then subject to ratification by the Senate. The Supreme Court deferred to the political branches of the government when it was confronted with questions as to whether one of the parties before it was an Indian tribe. After Congress, in 1871, ended the use of treaties in Indian Affairs, Congress continued to require the Executive Branch to make determinations as to whom the government was obligated in order to comply with Congress’s mandates to provide services and benefits to Indians. To that end, the President set aside lands and took other actions by Executive Order.

In 1994, Congress enacted the “Federally Recognized Indian Tribe List Act of 1994” (List Act). As expressed in this Act, Congress found that Indian tribes presently may be recognized by (1) Act of Congress (Legislative branch), (2) “the administrative procedures set forth in” 25 CFR Part 83 (Executive branch), or (3) a decision of a Federal court (Judicial branch). In so doing, Congress ratified the then-current list of federally recognized tribes. Historically, the courts have deferred to the political branches on questions of tribal status as already noted. The courts have, however, ruled narrowly on a group’s tribal status for purposes of a land claim determination as to the applicability of the Indian Trade and Intercourse Act, for purposes of special statutes, such as the Indian Depredations Act, or for purposes of a defense such as sovereign immunity. More generally, the courts have consistently ruled that groups must first exhaust their administrative remedies before seeking remedies under the Administrative Procedure Act (APA), and then the Courts may review a determination of the Department of the Interior as being contrary to law or arbitrary and capricious.

- 2. When the Secretary promulgates revision to Part 83 for the purpose of modifying the criteria a petitioner must meet to be acknowledged as a tribe, or to modify the burden of proof necessary for a petitioner to establish that it meets a criterion, would not such revision be the result of political considerations?**

The Department cannot speak to the last Administration’s political considerations for revisions to the Part 83 process. That said, there is surely no single set of factors or considerations that reflect the only permissible way to formulate the Part 83 Regulations, and the political branches must have a measure of flexibility to alter those regulations as appropriate. As I indicated in the hearing, we welcome further opportunities to work with you and this Committee on ways to improve the transparency, efficiency, and accountability of the federal recognition process.

- 3. The final rule published on July 1, 2015, to revise Part 83 modifies the standards and criteria by which the Department extends federal recognition. Having provided no explanation of its grounds for doing so in the proposed rule, the final rule eliminated what had been an important requirement for review of the enrollment practices of tribes acknowledged under Part 83. This provision was to ensure that tribes did not transform themselves after acknowledgment to become different entities. What was the reason for removing this requirement?**

When it issued the Final Rule, the Department explained that it “eliminated this section because Part 83 is focused on the process and criteria for Federal acknowledgment and this section would impose limitations on newly acknowledged tribes.” The Department affords newly acknowledged tribes the same deference to determine its own membership as it affords other federally recognized tribes.” We welcome the opportunity to work with Congress to address any concerns about this issue.

Questions from Rep. Bergman

- 1. Does the Administration have concerns about Congress, through this bill, inadvertently splitting our tribes into two separate categories – those whose recognition was explicitly granted by Congress, and those that were recognized through administrative channels? That either the Administration or the tribes themselves might now have separate views of those two categories?**

No. When Congress acknowledges an Indian group as a federally recognized Indian tribe, that newly-acknowledged Indian tribe, like all federally recognized Indian tribes, is eligible for programs and services by the United States. The Department is not aware of any distinction made by tribes or the Administration between those recognized by Congress and those acknowledged through the Part 83 administrative process.

- 2. In your opinion, do you think this legislation will make it easier for tribes to become federally recognized?**

As I indicated in the hearing, the Department believes Congress has the authority to revise and amend the federal administrative recognition process. We believe there is great merit in examining the overall federal acknowledgment process and identifying ways to bring increased transparency and consistency to the current standards. It is the Department’s current position that affirmative Congressional recognition more directly aligns the formal recognition of tribes with the assignment of Federal rights derived by the recognition decision.

- 3. Are there any significant roadblocks ahead for these tribes who would need Congressional approval that they might not have had through the current process?**

As I indicated in the hearing, there are three main ways for an Indian group to gain federal recognition. First, Interior presently has the statutory authority to recognize groups with its Office of Federal Acknowledgement through the formal Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83 or Part 83), Federal Acknowledgment of American Indian Tribes process, which were revised in 2015. Second, in limited circumstances, tribal recognition may occur through the federal courts. Lastly, but most notably, groups may seek recognition by the Congress through the legislative process. Congress, having the plenary authority over Indian affairs matters, has exercised this authority, as is recently evidenced by the President signing H.R. 984, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, into law. We are also aware of other Indian groups, such as

the Little Shell Tribe of Chippewa Indians, the Miami Nation of Indiana, and the Clatsop-Nehalem Confederated Tribes of Oregon, who are pursuing federal recognition through Congress. The Department takes no issue with Congress employing its authority to recognize tribes or to set criteria that would bring greater efficiency and transparency to the approval overall process.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

MAR - 7 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Mr. Michael Black, Acting Assistant Secretary – Indian Affairs, after his appearance before your subcommittee at the April 21, 2017, hearing on “Safeguarding the Seventh Generation: Protection and Justice for Indian Children and the Implementation of the Native American Children’s Safety Act of 2016.”

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

Question from Sen. Daines:

Question: As detailed in a December 2016 report published by the Montana Department of Justice Office of the Child and Family Ombudsman, tragically, 14 children died across Montana after reports of abuse were made to the Montana Department of Public Health and Human Services Child and Family Services Division. Of these 14 children, four were American Indian. Clearly, there is a strong need for better protections and care for Native American children in the foster care system. While the Native American Children's Safety Act is key to ensuring that tribal social services agencies can make informed decisions about child foster placements, what additional information, beyond the data points outlined in that Act, would benefit tribal social services agencies to have access to or be required to collect to enable tribes to better safeguard children in the foster care system?

Response: Congress enacted the Native American Children's Safety Act (NACSA) on June 3, 2016. NACSA requires the Department of the Interior (DOI), Bureau of Indian Affairs (BIA) to issue guidance to Tribes on appropriate standards for foster-care placements by June 2018. The Assistant Secretary - Indian Affairs and BIA have partnered with the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and the Department of Health and Human Services, Administration for Children and Families to establish guidelines for Tribes to conduct: 1) a criminal records check, including a fingerprint-based check of national crime databases of all adults in any tribally ordered foster-care home; and 2) a check of Tribal and state abuse and neglect registries (this to include a check of all states where the individual has lived in the past 5 years) before a Tribe places an Indian child in foster care.

DOI's guidance will provide assurance, safeguards, and controls in the protection of Indian children when an out-of-home foster placement is necessary by the Tribe. To create a consistent and standard process, the AS-IA plan also includes offering training to Tribes on NACSA after finalization of the guidance.

What NACSA does not consider are two issues: access to information needed to conduct background checks, and resources needed to conduct background checks.

Many Tribes lack the resources to hire the staff needed to dedicate time to do the background checks, perform ongoing case management services, work on adjudications, and conduct the monthly site visits required by NACSA. Moreover, training on the various data systems used for background checks is needed. That is, Tribal social service programs need trained staff that is solely dedicated to working on the background checks, adjudicating and managing these cases, and conducting the monthly site visits required by NACSA.

Additionally, according to the Department of Justice, many Tribes have difficulty accessing the fingerprint-based criminal records check system for a variety of reasons. While both the Violence Against Women Act (VAWA) 2005 and Tribal Law and Order Act (TLOA) of 2010 provide authorization for tribal law enforcement agencies to access national crime information databases, tribal participation in national criminal justice information sharing depends upon state regulations, statutes, and policies in which tribal land is located. Tribes may face barriers to accessing and entering information into national crime

Senate Committee on Indian Affairs
Hearing on Safeguarding the Seventh Generation
April 21, 2017

information databases via state networks, so DOJ began the Tribal Access Program in 2015, which expands access to all national crime information databases to all authorized tribal civil and criminal justice agencies for tribes selected to participate in the program. Currently, 47 tribes either have or are in the process of obtaining a kiosk that provides access to the criminal records system through DOJ's Tribal Access Program (TAP). Additionally, although there are for-fee private organizations that provide this service, most of these services are prohibitively expensive.

Another barrier with regard to abuse and neglect records is that each state maintains its own closed registry of child abuse investigation records. That is, there is no one search engine that is capable of examining abuse and neglect records across multiple states. There is also no national child abuse registry for Tribes. In Indian country, many families have ties to other tribal communities. So, while Tribes can conduct background checks using their own court, law enforcement, or social service systems, they cannot search other tribal communities even though there may be relevant records there. This is challenging if a Tribe takes a hardline stance on confidentiality because NACSA does not require a search of other tribal child abuse registries. NACSA only requires Tribes to check state registries and its own tribal registries. Thus, the Bureau of Indian Affairs (BIA) plans to assist Indian Tribes in complying with NACSA by providing information on how to conduct background checks. The BIA has prepared a Draft NACSA Guidance document, entitled Background Checks For Foster Care Placements Under NACSA, for Tribes' review and comment. The Draft NACSA Guidance is also available at the following website:

<https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development>

During February 2018, the Office of the Assistant Secretary – Indian Affairs will be hosting Tribal consultation sessions to hear Tribes' input on this Draft NACSA Guidance.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR - 8 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Mr. John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, after his appearance before your Committee at the November 27, 2017, hearing on S. 1400, Safeguarding Tribal Objects of Patrimony Act of 2017.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,


Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

NAGPRA Enforcement

1. In your written testimony, you stated that the Department of Interior believes that “vigorous enforcement” of the Native American Graves Protection and Repatriation Act (NAGPRA) is an “essential element” to combatting theft of items of cultural heritage. However, earlier this year, Secretary Zinke suspended all NAGPRA Review Committee Activities indefinitely. The Review Committee plays an important role under NAGPRA – it was established by Congress “to monitor and review implementation of the inventory and identification process and repatriation activities.”
 - a. Does Secretary Zinke have the authority to suspend the NAGPRA Review Committee? If so, what is the source of that authority?
 - b. What are the Secretary’s reasons for suspending the Review Committee?
 - c. Does the Secretary have plans to reconvene the Review Committee so that it may pursue its statutorily mandated mission? If so, what are those plans?

Response to a, b, and c: The Department’s ongoing review of advisory groups is critical to ensuring compliance with the Federal Advisory Committee Act. The Department is currently in the process of filling vacancies on the NAGPRA Review Committee. The NAGPRA Review Committee is not suspended and once they have quorum, they may meet following required public notice.

Indian Country Recommendations

1. Over the past few years, tribal leaders have worked with federal agencies on a variety of specific recommendations to address protecting tribal patrimony, such as creating a multi-agency task force or working group that would develop a comprehensive regulatory language and recommendations, seeking bilateral agreements with key foreign governments, and developing guidance for customs officials.
 - a. Is the Department of the Interior aware of any of these recommendations?
 - b. If so, is the Department planning to take up any of these recommendations? Or if not, can I get your commitment that you’ll follow up with tribal leaders and engage on this issue?
 - c. What is the Department currently doing to combat the export of illicitly acquire cultural items?
 - d. How is the Department engaging tribes to help repatriate their cultural heritage from abroad?

Response to a, b, c, and d: The Department is aware of these interests and continues to work internally and with other federal agencies to explore how best to address these challenging issues in a meaningful way.

Protecting Cultural Heritage

1. The Department’s Office of International Affairs is the primary point of contact for other agencies that conduct international activities, including the State Department. At an

Albuquerque field hearing on this issue, I heard testimony that the lack of an explicit ban on items of cultural patrimony hindered the federal government's negotiations to stop the sale of the Acoma Shield and to bring it home. Would an explicit ban on the export of items of cultural patrimony help strengthen the federal government's hand in these types of negotiations?

Response: The Department is continuing to assess an array of options as to how best to address the challenges associated with the export of cultural patrimony.

Effective Congressional Oversight

1. Since the beginning of the 115th Congress, I have sent Secretary Zinke 10 letters (7 addressed directly to him; three to President Trump) and submitted six submissions (questions for the record) to the Department's hearing witnesses for response. I have not received a single response. At the November 8th hearing, you committed to me directly that you would address this unacceptable backlog of unanswered letters and QFRs. It has been two weeks since you made this commitment. What is the status of your review? What is the projected response time?

Response: The Department continues to work through the pending requests you identify in your question. In fact, I understand that you have recently received a response to several of your letters. We are committed to addressing the backlog as expeditiously as possible.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR - 8 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Mr. Bryan Rice, Director, Bureau of Indian Affairs, after his appearance before your Committee at the October 25, 2017, hearing on several bills related to law enforcement in Indian Country.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

Questions from Vice-Chairman Udall

Prisoner Rights

1. As tribes move to exercise the enhanced sentencing restored under *TLOA* and the special jurisdiction restored under *VAWA*, they report issues with providing medical care to longer-term inmates. According to data produced by the BIA, nearly 60 percent of BIA and tribal jails are without any on-site healthcare services. Tribal and BIA jails typically depend on the Indian Health Service to care for inmates, but under *VAWA*, non-IHS eligible inmates are now housed in these facilities for the first time. S. 1953 fails to address the issue of healthcare access for inmates in BIA-funded correction facilities.

- a. **How is BIA working to ensure that all inmates have access to adequate health care?**

Response: The BIA Office of Justice Services (OJS) works diligently to ensure that all inmates have access to health care for all detention facilities on tribal lands. The health and safety of inmates and staff is of primary concern. BIA Policy requires Detention Facilities to provide access to available health care to all inmates. The BIA works directly with the Indian Health Services (IHS), and persons in BIA or tribal custody are eligible for services on the same basis as other beneficiaries of the IHS. In instances where IHS services are not available, BIA would procure local medical services for inmates.

The Tribal Detention Programs under the P.L. 93-638 Contracts or Self Governance Compacts require the jail administrator and health authority to develop a written plan for the provision of general medical, emergency medical, dental and mental health care. The minimum requirements for this plan between the tribe and the medical provider are outlined within the BIA Detention Guidelines, which are attached.

Due to the lack of bed space in some areas, BIA OJS also manages commercial contracts. The Contractor addresses emergency, routine non-emergency medical, psychological, and dental needs of arrestees or inmates with an established medical professional assessment. The Contractor is required to defer to the Indian Health Service or a tribal health care facility/provider when possible and appropriate for arrestees or inmates who are enrolled members of a federally-recognized tribe.

- b. **Are there any statutory or regulatory barriers that would prevent BIA-funded corrections facilities from working with federal health systems, like IHS, to address this issue?**

Response: As noted in the previous response, the IHS, as well as Tribal Health programs provide services for Native American inmates. These programs have their own legal requirements regarding who qualifies for the services. BIA

does coordinate with IHS on what services they have available in the locations where we operate detention facilities. Generally, Native American inmates are eligible for direct services; however, inmates have limited eligibility for Purchased or Referred Care, which would otherwise cover emergency medical care and specialized treatment not available directly from IHS at particular locations. Accordingly, we are not aware of any express statutory or regulatory barriers that bar BIA from working with federal health systems, such as IHS. BIA defers to IHS regarding whether its statutory or regulatory requirements prevent it from working with BIA to address this issue.

2. S. 1953 attempts to address a number of issues related to public safety in Indian Country but fails to address the protection of Native inmates' rights, including their religious freedoms (e.g. hair length and wearing sacred objects). According to a study by the Navajo Nation Corrections Project, recidivism among American Indians is dramatically reduced by participation in traditional religious ceremonies.² However, many Native American inmates have been denied the ability to participate in regular religious practice or keep articles of religious devotion.³ Last year, the Supreme Court rejected an appeal from several Native American inmates incarcerated in an Alabama state prison to review a decision by the Eleventh Circuit that said the state's restrictions on prisoner hair length did not violate federal law by infringing on the prisoners' religious beliefs.⁴ Native youth are disproportionately represented in federal prisons due to the unique jurisdictional landscape of Indian Country;⁵ thus, their cultural rights and needs are often not respected.

² See "Navajo Nation Corrections Project," Harvard Kennedy School of Government, at <https://www.innovations.harvard.edu/navajo-nation-corrections-project>.

³ See, e.g., Stephanie Beran, "Native Americans in Prison: The Struggle for Religious Freedom," *Nebraska Anthropologist*, 2005.

⁴ *Knighl v. Thompson*, 796 F.3d 1289 (11th Cir. 2015), cert. denied, 136 U.S. 1824 (2016).

⁵ See, e.g., "Juvenile Justice: Failing the Next Generation," *A Roadmap for Making Native America Safer*, Tribal Law and Order Commission, 157, at https://www.aisc.ucla.edu/loc-report/files/Chapter_6_Juvenile_Justice.pdf.

How is your Department making sure that culturally-appropriate programming and policies are in place for incarcerated Native youth?

Response: The BIA OJS Detention Facilities are located within the geographical boundaries of a Reservation. Detention Centers have policies and procedures that support culturally relevant programming to include counseling, treatment, medical, youth activities, domestic violence and spirituality.

3. Several years ago, news reports began to surface that Native youth in BIA-funded detention facilities were not provided with any educational or vocational opportunities.⁶ Additionally, Native youth represent as much as 60% of juveniles in federal custody.⁷ However, the federal corrections system contains no juvenile division - meaning these youth have limited to no access to age-appropriate educational or rehabilitation opportunities.⁸ S. 1953 fails to adequately address the educational-access rights of Native youth in tribal, BIA, and federal detention facilities. **What efforts is the Office of Justice Services undertaking to ensure all Native youth in their detention facilities have access to educational opportunities?**

Response: BIA OJS has employed a contractor to develop and implement an educational program tailored for BIA Juvenile Detention Centers (JDC). The program provides quality educational and support services, benefiting male and female Native American juveniles.

The BIA education contractor teaches reading, language arts, math, science, and study skills to serve most JDC facilities. A special emphasis was placed on teaching remediation skills in reading and math to address the academic needs of the juveniles.

The BIA and Tribal programs develop and implement academic educational program tailored for Native youth in their Detention Centers, and provide quality educational and support services benefitting both male and female juveniles.

Tribal Public Safety Resources

4. In FY14, the Department of Justice imposed a unilateral moratorium on tribal public safety and justice construction. Since that time, the BIA has decommissioned several tribal corrections facilities, leaving some communities without corrections facilities. Sisseton Wahpeton's Chairman testified that his tribe has to "catch and release" domestic violence offenders and drunk drivers, decreasing the effectiveness of officers' attempts to deescalate or contain offenders.⁹ In addition to exacerbating public safety issues, DOJ's moratorium means BIA must divert funding to pay to house offenders in county and private prisons.
 - a. **Has BIA done an estimate of the extra costs paid by the federal government and tribes to contract bed space with counties and private prisons when BIA facilities are decommissioned?**

Response: The chart below displays an analysis of three recently closed detention facilities. Detention facility closures have occurred for multiple reasons to include; severe equipment failures, repair costs exceeding available appropriations, safety violations and the most serious being based off the facility condition impacting life, health and safety of inmates. To date, BIA has not experienced a cost savings from these facility closures because resources were shifted into a short-term hold and prisoner transport program for each facility. This occurred primarily because the vast majority of program costs (74% to 78%) reside in personnel and travel, which are costs that continue despite the facility closure.

Due to existing staff shortages at other BIA-run facilities, any displaced employees not used for short-term hold/transport are redirected to fill staffing gaps at other locations. As a result, there have been no savings related to facility closures to offset against our additional contract bed costs with counties and private prisons. The median inmate costs at BIA operated facilities is approximately \$120 a day versus approximately \$65-\$150 a day at a contract bed facility, in addition to an increase in transportation costs to transport inmates to contract facilities outside the local area. These additional costs to the Federal government and tribes are shown in the far right column.

Decommissioned Facility	Bed Capacity	Average Annual Program Cost 2013 - 2016	Actual Program Cost in 2017	Additional Contract Bed Cost (Annual)
Hopi	68	\$2,382,785	\$2,651,846	\$912,503
Crow	32	\$1,225,802	\$1,248,082	\$1,140,750
Sisseton (Tribal)*	20	\$210,711	\$213,066	\$149,879

**Tribal program resources necessarily shift in a manner similar to our Federal operations upon facility closure. As a result, no cost savings are assumed for the Sisseton program.*

- b. Additionally, what is BIA doing to ensure that tribal inmates housed in contracted facilities have access to education and culturally relevant rehabilitation?**

Response: Each contracted facility has a contracting officer representative (COR) who is a BIA Correctional Specialist. Through the COR, the BIA has input on each contract and the services that would be provided by contracted facilities. Each county, private company, or state facility has their own array of programs and services. BIA makes efforts to seek out contracts that properly place inmates where the services are needed and have bed space available. The services would include educational opportunities and cultural programming.

These contracts are monitored annually and site visits are conducted throughout the year.

⁶ See, e.g. Tate, Julie. "From Broken Homes to a Broken System," *The Washington Post*, (Nov. 28, 2014), at http://www.washingtonpost.com/s/national/2014-11-28/from-broken-homes-to-a-broken-system/?hpid=hp_term%20tribe%20221bca8e05d3.

⁷ See "Juvenile Justice: Failing the Next Generation," *supra* note 4, at 157.

⁸ *Id.* at 155.

⁹ S tatement of David Flute, Chairman of the Sisseton-WahpetonSioux Tribe, before the S. Comm. on Indian Affairs (Oct. 25, 2017), 6, at https://www.indian.senate.gov/committees/default/files/10_25_17_030DaVe%20Flute%20Testimony.pdf.

Questions from Sen. Heitkamp

1. In April, the DOJ Office of Tribal Justice created the Indian Country Federal Law Enforcement Coordination Group, consisting of 12 federal law enforcement components, that aims to increase collaboration and coordination to enhance the response to violent crime in Indian country. The Bureau of Indian Affairs Office of Justice Services is co-leading this effort. **Can you provide an update on the Group's discussions and if anything has come out of them yet?**

Response: BIA, the Executive Office of United States Attorneys (EOUSA), and the Office of Tribal Justice continue to collaborate on the Attorney General's Violent Crime Reduction Coordinating Committee and have been critically important in developing relationships between federal agencies. The Indian Country Federal Law Enforcement Coordination Group (ICFLECG) also provides a forum for law enforcement to discuss new issues facing Indian Country. The Coordination Group has identified the prosecution of violent crime and opioid abuse in Indian Country as a priority. As part of the collaboration through ICFLECG, BIA and EOUSA have collaborated on a curriculum to train tribal prosecutors and Special Assistant United States Attorneys (SAUSAs) in trial advocacy skills. This curriculum focuses on skill sets needed to properly prosecute opioid and violent crime cases. This training will be held at the DOJ National Advocacy Center the week of March 19, 2018 and 42 tribal prosecutors plan to attend. The training facts are derived from a recent case at Pascua Yaqui which involved violence and use and sale of illegal narcotics. Thereafter, DOJ and BIA will select 9 advanced tribal prosecutors from the March 19 training, and work to create 9 additional training sessions in each OJS District to take place within the next 2 years. These relationships have resulted in joint investigations between BIA and other agencies in the area of drug enforcement, and training regarding the dangers of Fentanyl and Fentanyl derivatives. The group has also worked together to coordinate an increased presence in Indian Country during the National Drug Take Back Initiative. Through this federal agency collaboration with the Drug Enforcement Administration and other DOJ components, BIA increased the number of take back locations to 115 throughout Indian Country. These Indian Country locations removed just over 1,500 pounds of illegal substances from tribal communities.

2. There continues to be a huge gap in the training of BIA officers versus FBI agents when it comes to investigating crimes like human trafficking and homicide. **Given the fact that in many cases BIA officers will be the first on the scene or to speak with a victim, how do we ensure that our BIA officers have the proper training and knowledge to make sure that the investigation is not compromised and that the FBI and US Attorney's offices are able to prosecute the perpetrators?**

Response: The duties of a BIA Uniformed Officer are much different than an FBI or BIA Special Agent. Typical duties for a uniformed officer include responding to emergency and non-emergency calls, patrolling assigned areas, conducting traffic stops, and issuing citations. The Federal Law Enforcement Training Center (FLETC) basic police training programs address common knowledge, skills, and abilities that are expected of all federal uniformed officers. This includes, but is not limited to skills

such as how to preserve a crime scene, identify and collect evidence, interview witnesses and prepare written incident reports that record all aspects of a criminal or non-criminal incident.

The BIA also employs Special Agents that are highly experienced and trained to take the lead on complex federal criminal investigations or lead a team of investigators on major crime scenes. These agents also work alongside the FBI, DEA and other federal agencies to conduct joint federal criminal investigations within Indian Country. Over the past decade, BIA has focused on enhancing the investigative abilities of their special agents to meet or exceed those of other federal agencies. Since BIA agents normally work closely with the BIA uniformed police programs, the uniformed officers are able to learn additional investigative techniques and hone their investigative skills through mentoring and hands-on experiences with seasoned agents.

What additional training and/or requirements do you think we need so that we begin to move towards parity in the investigation and presentation of a case to the US Attorney's office regardless of who is the lead investigating agency or first on the scene?

Draft Response: The BIA and Tribal investigators complete criminal investigator training programs offered by the Federal Law Enforcement Training Center (12 weeks) or the Department of the Interior's Investigator Training Program (6 weeks). Additional criminal investigation training specific to the investigation of violent crime in Indian Country is provided to BIA, tribal, and FBI special agents in the Indian Country Criminal Investigation Training Program (2 weeks) that includes courses in Criminal Jurisdiction in Indian Country; US Attorney's Office Communication and Collaboration; Trial Preparation, and Defense Strategies.

The BIA has assessed additional training and resources which includes the capacity to conduct criminal investigation to address Archeological Resources Protection Act (ARPA) and Drug Investigation and Awareness—specifically, opioids. BIA training is carried out at the Federal Law Enforcement Training Center (FLETC) in Artesia, New Mexico, which provides facilities for partner organizations but currently has no forensic crime scene facility to support important training initiatives for Indian Country.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR - 8 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Mr. Jason Thompson, Acting Director, Office of Tribal Justice, after his appearance before your Committee at the September 27, 2017, hearing on the GAO Reports on Human Trafficking of Native Americans in the United States.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

Questions from Vice Chairman Udall

Jurisdictional Issues

1. Human trafficking on tribal lands raises many questions related to law enforcement and court jurisdiction. The Government Accountability Office (GAO) spoke with tribal law enforcement departments that indicated human trafficking on tribal lands involves non-tribal members (as either traffickers or traffickees), creating potential jurisdictional challenges. Currently, tribal jurisdiction over non-Indians is limited to domestic violence crimes committed against a Native spouse or Native significant other on tribal land. This means that tribes cannot bring charges against a non-Native defendant who participates in the human trafficking of Native women on tribal land.
 - a. **Could you expand more on how BIA law enforcement works across jurisdictional boundaries to address human trafficking?**

Response: Participating in local task forces has proven to be one successful avenue to address jurisdictional boundaries when investigating Human Trafficking enterprises operating in or near Indian Country. The Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) Division of Drug Enforcement (DDE) Agents coordinate and partner with other federal and/or state task forces in the area to multiply resources to address the increased criminal activity in targeted areas in or affecting Indian Country.

To ensure BIA DDE Agents can mitigate any jurisdictional boundary issues, Agents have worked collaboratively with other federal, tribal, state and local law enforcement officials to prepare targeted human trafficking operations at specific locations in and around Indian Country enterprises. This ensures potential predators and human trafficking organizations are not able to exploit potential jurisdictional gaps and escape detection.

BIA DDE has teamed up with Homeland Security Investigations (HSI), the Federal Bureau of Investigation (FBI) and State Human Trafficking Divisions on recent Human Trafficking Operations. BIA DDE works to secure additional intelligence by continuing to forge local partnerships with other tribal, state and federal law enforcement in order to provide additional resources to address Human Trafficking enterprises.

BIA-OJS has also worked closely with the U.S. Department of State to engage Tribes in identifying the types of Human Trafficking affecting tribal communities, best practices, and the identification of gaps in services. The BIA OJS continues its collaborative effort with the U.S. Department of State to engage tribal communities on Human Trafficking issues.

- b. **Does this gap in jurisdiction cause enforcement challenges for tribal police and courts?**

Response: Yes, jurisdictional gaps always provide unique challenges for law enforcement and court programs. Since tribal police and courts do not have jurisdiction over all persons

**Senate Committee on Indian Affairs
Trafficking of Indians and Alaska Natives
September 27, 2017**

committing crimes within Indian Country, there is the potential for perpetrators to slip through jurisdictional gaps.

Funding for Tribal Law Enforcement and Justice Programs

2. Four federal agencies -the Federal Bureau of Investigation (FBI), Bureau of Indian Affairs (BIA), and the U.S. Attorneys' Office (USAO), and U.S. Immigration and Customs Enforcement (ICE.)- are in charge of the investigation and prosecution of human trafficking cases in Indian country. Between 2013 and 2016, these agencies reported that they conducted only 14 federal investigations of human trafficking offenses in Indian Country. The Department of Justice undertook two related federal prosecutions during that same period. It is likely that the capacity of these agencies to undertake investigations and prosecutions is limited by personnel resources. Recent analysis by the BIA showed that federal funding meets only 42% of the need for law enforcement in Indian Country, but President Trump's FY2018 Budget Request would cut funding for tribal and federal justice programs. This proposal includes \$36 million in cuts to tribal justice programs at the Department of Interior. It would eliminate funding for 48 BIA law enforcement officers, 126 tribal police officer positions, and 600 special agents at the FBI.

How would the budget cuts and reduction in law enforcement personnel impact the ability to combat human trafficking and other violent crimes in Indian Country?

Response: Human Trafficking investigations are often complex and require an extraordinary amount of coordination among Federal agencies and tribal, state and local law enforcement. These investigations and operations are part of the overall core mission for BIA and tribal law enforcement agencies, and thus, as the BIA refocuses its budgetary resources on its core missions, will remain a priority.

Interagency Coordination

3. In his written testimony, Mr. Thompson stated that 414 Indian Policy Academy (IPA) attendees have received special training regarding human trafficking. 5 He also stated that IP A has partnered with the Department of Homeland Security's Blue Campaign and the National Indian Gaming Commission to spread awareness about this growing criminal issue in Native Communities. This is a step in the right direction, but stakeholder coordination is key to improving efforts to combat issues like human trafficking. Senator Udall sent a letter to the Department of the Interior (DOI), the Department of Health and Human Services (HHS), and the National Indian Gaming Commission asking them to coordinate with victim service providers and other federal agencies to ensure that all federal employees on tribal lands are equipped to spot and respond to domestic violence and human trafficking in Indian Country.
 - a. **What specific training for law enforcement is needed so that human trafficking is not mistaken for prostitution?**

Response: The current human trafficking curriculum outlines case examples and differentiates between human trafficking and correlating crimes associated with human trafficking, such as prostitution. The training also outlines best practices for collaboration with criminal investigators and prosecutors to identify the associated offenses.

b. Could you provide more detail about the training on human trafficking provided at the Indian Police Academy?

Response: The human trafficking course was developed collaboratively by the Department of Homeland Security- Blue Campaign and the Federal Law Enforcement Training Center, the Department of Justice, and the Bureau of Indian Affairs. Those agencies are in the process of drafting an updated course with the BIA Indian Police Academy. The current human trafficking course consists of defining human trafficking; applicable criminal laws; current trends and indicators; and investigative response.

Combating Online Human Trafficking

4. The Internet plays a role in human trafficking. Traffickers sometimes communicate with young people online, posing as potential boyfriends or girlfriends, tricking them and eventually forcing them into trafficking. Traffickers also use online platforms to sell their product -using classified advertisement listing services such as Backpage.com, they post information about the men, women, and children that they are trafficking. The Internet's role in human trafficking is complex, and successfully combating human trafficking requires understanding its role. Fighting digital platforms that assist in the trafficking of persons potentially requires additional resources, and might raise complicated jurisdictional questions.

a. What new challenges does the Internet bring to successfully combating human trafficking?

Response: Traffickers are now using the internet to promote escort service ads that mask sex trafficking operations. The internet allows the sex traffickers to anonymously post fictitious photos and information about the victims, and thus avoid law enforcement identifying them prior to the physical meetings where the victim will be exchanged for money or other goods. The inability of Law Enforcement to positively identify both criminals and victims prior to the in-person meeting allows traffickers to detect law enforcement presence at meeting locations, thereby avoiding contact by officers. Internet sites utilized by traffickers have also begun implementing more stringent log-in controls, which pose additional hurdles to officers gaining access to such sites without being detected.

b. Is Indian Country prepared to tackle all of these challenges?

Response: Indian Country still faces some challenges in this area. The lack of personnel that are trained and proficient in social media and internet investigations can leave a void and sometimes delay these investigations. Since many of these sites have explicit or restricted content, BIA and Tribal law enforcement often experience hurdles accessing these web sites on government computer equipment. The constantly evolving technology utilized by these

**Senate Committee on Indian Affairs
Trafficking of Indians and Alaska Natives
September 27, 2017**

criminals, and concomitant lack of funding on the part of law enforcement to upgrade its own technology, also presents a challenge for BIA and tribal law enforcement in conducting these investigations.

Indian Country has also experienced issues with getting undercover IDs and accounts to aid agents in avoiding detection. BIA and Tribal law enforcement programs do not have separate administrative subpoena authority to obtain records like other federal agencies, such as FBI, HSI, DEA and IRS. Indian Country law enforcement agencies partner with other federal agencies to maximize resources and share intelligence.

c. If not, what resources do you need in order to adequately confront those challenges?

Response: We continue to identify additional useful resources, including, for example, advanced training on utilizing social media and the internet as needed tools for identifying and investigating human trafficking enterprises.

Federal Grant Accessibility

5. Law enforcement agencies (LEAs) and service providers surveyed by the GAO noted that federal government assistance is most needed in the form of: 1) additional funding and 2) additional training and technical assistance. The GAO also reported that there are a total of 50 federal grant programs that could address human trafficking, but only two of those exclusively address Native human trafficking. While the other 48 programs may technically be available to tribes, we do not know if these programs are reaching Native communities or if Native applicants are competitive in obtaining these grants.

a. How do we make these 48 grants more accessible to tribes?

Response: These grants are administered by the Department of Justice (DOJ) and other providers. BIA does not provide grants to tribes that specifically address Human Trafficking.

b. What additional resources would improve BIA and tribal law enforcement's ability to combat human trafficking?

Response: As with other federal, tribal, state, and local law enforcement agencies, human trafficking is among our highest priorities. The most important resources for combatting human trafficking are the on-site investigators. Therefore greater coordination among all of these agencies is of the utmost importance, and the best method of shifting more resources to the front line of combatting these horrible crimes.

Questions from Sen. Cortez Masto

1. **What kind of training and technical assistance is the DOJ currently providing to tribes that address human trafficking? How are you working with DHS and DOJ on training to identify human trafficking?**

Response: Your question is more appropriate for the Departments of Justice (DOJ) and Homeland Security (DHS) for a response. The Bureau of Indian Affairs – Office of Justice Services (BIA-OJS) understands DOJ’s Bureau of Justice Assistance (BJA) funds human trafficking training, for law enforcement and prosecutors that is specific to tribal lands and a Human Trafficking Awareness course for casino employees. BJA’s Human Trafficking Training and Technical Assistance (TTA) provider is also able to provide customized training and technical assistance to tribal communities and their law enforcement agencies, when requested.

As an additional note, the BIA OJS partners with other federal and state agencies to collaborate and share resources in an effort to target human trafficking occurring in Indian Country. This collaboration has allowed law enforcement to run multiple human trafficking operations simultaneously in a given area, and allow agencies to share resources. This has been very beneficial, since a human trafficking investigation is very resource intensive and requires a lot of logistical preparation.

Our BIA-OJS Division of Drug Enforcement has teamed up with Homeland Security Investigations (HSI), the Federal Bureau of Investigations (FBI) and State Human Trafficking Divisions on recent Human Trafficking Operations. The BIA-OJS Division of Drug Enforcement works to secure additional intelligence by continuing to forge local partnerships with other tribal, state and federal law enforcement in order to provide additional resources to address Human Trafficking enterprises that may be operating in or around Indian Country.

2. **Is there personnel or a position at within BIA's Office of Justice Services that specifically works fulltime on human trafficking issues and coordinating resources with tribes and tribal law enforcement? If so, can you please detail the name of the personnel and the title of the position?**

Response: BIA does not have any full-time personnel dedicated specifically to Human Trafficking investigations. Due to the close association of such trafficking to drug and prostitution cases, and the similar need for cross-jurisdictional efforts, the Division of Drug Enforcement is most closely aligned focused on these types of crimes. The Division of Drug Enforcement within BIA-OJS has also been tasked with leading investigations of human trafficking violations affecting Indian country.

3. **In the July GAO report, tribal law enforcement agencies cited a lack of funding and a lack of inter-agency cooperation as barriers to investigating and prosecuting human trafficking in Indian**

country. **What is BIA doing to ensure better inter-agency cooperation and what resources are needed from Congress to better equip tribal LEAs in identifying and prosecuting these crimes?**

Response: The BIA Drug Agents began providing hands on training and technical assistance to Tribal Police Officers during the deployments of Mobile Enforcement Teams to reservations. The onsite training includes areas such as techniques in undercover operations, identifying human trafficking enterprises, developing informants and the proper procedures for putting a successful criminal investigation report together for prosecution. BIA Indian Police Academy is working with the Federal Law Enforcement Training Center (FLETC) to develop and deploy training for tribal officers, specifically related to human trafficking.

4. In your written testimony you mentioned the "Project Beacon" grant program and its aim to increase victim-centered services available to Native Americans in urban areas. In FY 16, only three organizations received funding with this grant. **Why is the number so low? In your opinion, do we need more funding for these types of programs that work specifically with Native American victims?**

Response: Project Beacon is a grant program run by the DOJ Office of Justice Programs. The program increases services to urban American Indian and Alaska Native victims of sex trafficking. This question is more appropriate for the Department of Justice (DOJ) for information on the grant program and its administration.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR - 9 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Hoeven:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the December 6, 2017, legislative hearing before your Committee on: S. 664, the Navajo Utah Water Rights Settlement Act of 2017, and S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Tom Udall, Vice-Chairman
Committee on Indian Affairs

Senate Committee on Indian Affairs
Legislative Hearing on S. 664 "Navajo Utah Water Rights Settlement Act of 2017" and S.
1770 "Hualapai Tribe Water Rights Settlement Act of 2017"
Wednesday, December 6, 2017

For the Honorable Alan Mikkelsen
Deputy Commissioner, Bureau of Reclamation, U.S. Department of the Interior

Vice-Chairman Udall

1. Funding for Indian water rights settlements can often include a mix of discretionary spending and mandatory spending, as you know. Mandatory funds are an increasingly important part of the spending equation, given Interior's budget constraints.

This falls against the backdrop of growing backlog of "authorized but unfunded" settlements, potentially as large \$1 billion dollars as of FY2016, as Interior asserted at a 2016 hearing before the House Committee on Natural Resources.¹

a. The department did not specify the methodology for the figure referenced above (i.e., whether it includes expenditures that have been foregone when they were initially expected to take place and/or those that are planned for obligation in future years). Please provide a list of projects referenced in the testimony that remain "authorized but unfunded."

b. Please provide a list of Indian water rights settlements in which Congress provided direct/mandatory funds, the amount of mandatory appropriations versus discretionary appropriations, and any remaining amounts necessary relative to the authorization ceiling.

Response: The following tables provide a list of Indian water rights settlements that are currently authorized, but have not been fully funded or have on-going, statutorily mandated costs. As requested, the tables distinguish between mandatory and discretionary appropriations.

Table 1

Settlement	Source of Funding	Total Estimated Cost (TEC)	Total Appropriated through 9/30/17	Balance to Complete
Aamodt Litigation	Construction	65,287,000	29,266,993	36,020,007

¹ Testimony of John Bezdek, Senior Advisor to the Deputy Secretary of the U.S. Department of the Interior, in U.S. Congress, House Natural Resources Committee, Subcommittee on Water and Power, Legislative Hearing on Water Settlements, 114th Congress, 2nd sess., May 24, 2016, available at <http://democrats-naturalresources.house.gov/irno/media/doc/testimony bezdek.pdf>

	Trust Fund	37,500,000	37,500,000	0
	Mandatory	73,100,000	56,400,000	16,700,000
	<i>Total</i>	<i>175,887,000</i>	<i>123,166,993</i>	<i>52,720,007</i>
Crow	Construction	198,139,000	36,152,413	161,986,587
	Trust Fund	0	0	0
	Mandatory	277,935,000	277,935,000	0
	<i>Total</i>	<i>476,074,000</i>	<i>314,087,413</i>	<i>161,986,587</i>
Navajo-Gallup	Construction	771,593,000	432,717,449	338,875,551
	Trust Fund	50,000,000	41,978,000	8,022,000
	Mandatory	680,000,000	180,000,000	500,000,000
	<i>Total</i>	<i>1,501,593,000</i>	<i>654,695,449</i>	<i>846,897,551</i>
Pechanga	Construction	0	0	0
	Trust Fund	37,166,000	400,000	36,766,000
	Mandatory	0	0	0
	<i>Total</i>	<i>37,166,000</i>	<i>400,000</i>	<i>36,766,000</i>
Blackfeet	Construction	246,500,000	0	246,500,000
	Trust Fund	234,290,000	800,000	233,490,000
	Mandatory	0	0	0
	<i>Total</i>	<i>480,790,000</i>	<i>800,000</i>	<i>479,990,000</i>
	Construction	1,281,519,000	498,136,855	783,382,145
	Trust Fund	358,956,000	80,678,000	278,278,000
	Mandatory	1,031,035,000	514,335,000	516,700,000
	<i>Federal Total</i>	<i>2,671,510,000</i>	<i>1,093,149,855</i>	<i>1,578,360,145</i>

Table 2

Other Ongoing IWRS Settlements - Federal			
			Appropriated in FY 2017
Ak Chin			15,735,000
Animas La-Plata			2,652,000
Nez Perce			5,184,000
Pyramid Lake			142,000
San Carlos Apache			1,550,000
<i>Total Other</i>			<i>25,263,000</i>

Note: Table 2 lists the FY2017 appropriated funding for those enacted settlements with

ongoing costs but no authorization ceiling. That funding provides for a variety of activities. Funding for the Ak Chin and Animas La Plata water rights settlements will predominantly provide for ongoing operations and maintenance (O&M) costs for completed water projects. Funding for the Nez Perce water rights settlement will allow for annual leasing of water from willing sellers to augment the flow of the Snake River. Funding appropriated for the Pyramid Lake water rights settlement will be used to cover the Federal portion of the preparation and implementation of the Truckee River Operating Agreement (TROA). For the San Carlos Apache water rights settlement, the annual appropriations will be used to continue planning, designing, and completing pre-construction activities for a project to deliver 12,000 acre-feet of allocated Central Arizona Project (CAP) water.

2. In 2014, The Bureau of Reclamation's Upper Colorado Region and Lower Colorado Region, in collaboration with the 10 member tribes of the Colorado River Basin Tribes Partnership commenced the Colorado River Basin Ten Tribes Partnership Tribal Water Study to build on the technical foundation of the Colorado River Basin Water Supply and Demand Study. Please provide a status update on Tribal Water Study?

Response: The Colorado River Basin Ten Tribes Partnership Tribal Water Study is nearly complete. The Study's Draft Report has been reviewed by the member tribes of the Ten Tribes Partnership and is currently under review by DOI and Reclamation. We anticipate the Study's Final Report will be published in 2018.

3. What are the Department's views regarding the applicability of 25 USC 211 in S. 1770? (Question posed during hearing)

Response: Enacted in 1918 (40 Stat. 570), the statute placed certain limitations on the creation of Indian reservations in New Mexico and Arizona. However, it has been the longstanding position of the Department that, following the enactment of the Indian Reorganization Act (25 USC 5101 et seq.) in 1934, Section 211 does not limit the addition to (or creation of) Indian reservations when done consistent with Congressional enactments such as the IRA. That position has been confirmed by the Interior Board of Indian Appeals and a federal district court. Accordingly, the Department does not believe its citation in the pending legislation would be relevant or useful, but would instead be unnecessary and potentially create confusion regarding applicable authorities.

Senator Cortez Masto

Budget Questions - General and WaterSMART:

1. The Bureau of Reclamation, like so many other agencies within the federal government, have dealt with shortfalls in budgetary funding, which has hurt our government's ability, at times, to partner effectively with necessary stakeholder, and have sometimes inflicted negative impacts on our public lands, natural resources, and conservation programs.

Question: Do you believe more funding would allow the Interior Department to be a better partner to industry and the taxpayer?

Response: The Administration is committed to making the tough decisions that will lead to a balanced budget. At the same time, Reclamation remains fully committed to upholding Reclamation's mission to deliver water and power in an economically and environmentally sustainable manner in the interest of the American public. We must continue to prioritize our resources in order to ensure we uphold Reclamation's mission and remain vigilant stewards of taxpayer money.

2. The recent budget request for the Bureau of Reclamation is \$1.1 billion, a cut of \$209 million. The request proposes cuts for WaterSMART grants [the 50/50 cost share funding program used by irrigation/water districts, Tribes, and States can to quickly implement projects that conserve and use water more efficiently - and helping to increase use of renewable energy and protect fragile environment], water recycling and reuse projects, drought response, and rural water projects. The state of Nevada gets the least rainfall than any other state in the Nation so we have to be incredibly mindful of persistent drought conditions as well as infrastructure improvements.

Questions:

a. Do you believe these cuts will undermine these successful programs that help Nevada and other locations in the West respond to drought conditions in innovative ways?

Response: The President's FY 2018 budget proposes to balance program priorities. WaterSMART grants, water recycling and drought response activities allow Reclamation to assist local communities in their need to address current and future water shortages. In addition to those activities, rural water projects help build strong, secure communities and are important to supporting the livelihood of local economies. In order to ensure Reclamation continues to deliver water and generate hydropower into the future, we must work to carryout Reclamation's mission in an efficient and sustainable manner.

b. The Bureau of Reclamation operates significant facilities in both the Upper and Lower Colorado River Regions. How will these budget cuts affect needed rehabilitation of aging water delivery infrastructure in both regions?

Response: As Reclamation's assets continue to get older, there is a growing need to monitor and rehabilitate Reclamation's infrastructure. It is essential that Reclamation maintain and improve its existing infrastructure in order to deliver reliable water and power, ensure system reliability and maintain safety and sustained water conservation. Reclamation's annual budget includes the best yearly representations of the appropriated funds needed for maintenance at Reclamation facilities. When funding is not available from revenues, customers or other federal agencies, Reclamation aims to strategically leverage its appropriated funds to ensure the delivery of water and power benefits.

c. In rural communities, the availability of funding and resources to meet treatment standards and improve water reuse is more challenging. Do you believe that funding cuts will undermine your

administration of these programs, if you are confirmed?

Response: The WaterSMART program assists entities as they plan for and implement actions to increase water supply reliability and maintain economic productivity in the western United States in the face of serious water challenges brought on by wide-spread drought, increased populations, aging infrastructure, and environmental requirements. The Department requested \$59.1 million in funding for this program in the FY18 budget.

Bureau of Reclamation Questions - Colorado River Basin:

Most people know the Colorado River is the economic engine of the southwest and supplies drinking water to 36 million Americans, and that the use of that water outstrips supply. The seven states, water users, federal agencies and even the country of Mexico have a history of close cooperation, which has become ever more important as drought and increased water demands have left the two big reservoirs, Lakes Powell and Mead, at all-time lows.

Projections show that if no action is taken to reduce water use, usage restrictions could devastate the environment, cripple our communities and agriculture, and stall the economy.

1. Several years ago, four large municipal water suppliers (Denver, Las Vegas, Phoenix and southern California) partnered with the U.S. Bureau of Reclamation on a pilot \$11 million "system conservation" program. This System Conservation Program (SCP) pays water users to conserve and dedicate extra water to storage in Lakes Powell or Mead. The program has successfully demonstrated that farmers and ranchers want to participate in programs that provide for temporary, compensated and voluntary reductions of water use. Now demand from farmers and ranchers is so high that the program can only afford one in four requests. In 2016, the Senate voted 77 to 23 to authorize appropriations up to an additional \$50 million for SCP, and it was included in the Water Infrastructure Improvements for the Nation (WIIN) Act.

Question: Can you say whether the Bureau of Reclamation will continue and expand this market-based program that compensates farmers and ranchers for voluntarily conserving water?

Response: Reclamation is currently investing significant effort to contend with the long-term impacts of the multi-year drought in the Colorado River Basin, which, among Colorado River water conservation activities, includes the Pilot System Conservation Program. The System Conservation Program was conceived by the funding entities and Reclamation as a 2-year program to test the viability of voluntary, compensated, water conservation projects that reduce consumptive use and create "system water" to assist with maintaining storage in Lakes Powell and Mead. Although Reclamation is currently operating under a continuing resolution for 2018 and Reclamation's 2018 budget is uncertain, Reclamation has obtained commitments for additional funding from the non-federal partners and additional conservation projects will be implemented for the fourth consecutive year. Under the Consolidated and Further Continuation Appropriations Act, 2015, Public Law No 113-235, Section 206 (128 Stat. 2312), the Secretary of the Interior is required to submit to Congress by September 30, 2018, a report evaluating the

effectiveness of the pilot projects and making a recommendation whether the activities undertaken by the pilot projects should continue. Reclamation continues to work with funding entities to determine the future of the program.

2. Regarding the Colorado River, the years-long drought in the West have taken a toll on our water resources, as you know. Both the Lower Basin states and the Upper Basin States are working to develop Drought Contingency Plans (DCP) to improve water management in way that stabilizes reservoir levels. Lake Mead is one of the two largest storage reservoirs on the Colorado River system. Lake Mead water levels are important to Nevada because they determine whether a shortage is declare on the Colorado River. If a shortage is declared, Nevada would see a reduction in its water supply. The proposed DCP specifies voluntary reductions for each of the Lower Basin states in order to protect the water in Lake Mead. Meanwhile, the Upper Basin States are reviewing the DCP and developing actions of their own as well. If an agreement were to be implemented, my constituents especially would have greater certainty about the longer-term reliability of the Colorado River, supporting the economic and environmental health of southern Nevada.

Question: Will you exercise your authority and leadership to help the states finalize their DCPs, work with them on the legislation necessary to implement it, and then help them make implementation successful? We need your help to make finalizing the DCP a priority.

Response: Reclamation continues to be engaged in ongoing conversations regarding the development of Drought Contingency Plans in the Lower and Upper Colorado River Basins. We are encouraged by the diligent efforts of all the Basin States in working toward final agreement on their Drought Contingency Plans and to work within available water supplies. Reclamation has conducted modeling that indicates that the current plans proposed by the States would benefit both the Upper and Lower Basin states. Reclamation and Interior have actively participated in negotiations between the states and between the basins, have suggested solutions and have encouraged the States to finalize their plans. We look forward to continuing our work throughout the Colorado River Basin to develop plans that prevent Lake Mead and Lake Powell from reaching critically low elevations.

Climate Change:

A March 2016 Reclamation study says, "One of the greatest challenges we face is dealing with the impacts of climate change on our nation's water... We need to continue to develop collaborative strategies across each river basin to ensure that our nation's water and power supplies, agricultural activities, ecosystems, and other resources all have sustainable paths forward."

Specifically in regards to the Colorado River Basin, the report projects that the growing threat of climate change impacts the region saying that reductions in spring and early summer runoff could translate into a drop in water supply for meeting irrigation demands and adversely impact hydropower operations at reservoirs.

Question: Obviously, climate change impacts play a large factor in the further work to be done on water settlements. Can you describe the challenges climate change poses to this process and how Reclamation takes these issues into consideration?

Response: Reclamation is at the forefront of dealing with changing conditions in the Colorado River Basin, whether due to the highly variable flows into the Basin, the ongoing 18 year historic drought, or the growing demands on Colorado River water supplies from competing interests. As mentioned above, Reclamation is actively involved with the Basin States through Drought Contingency Planning to address short and long term solutions for the basin to work within the Law of the River and the water supplies available during the current drought and potential long-term supplies.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 14 2018

The Honorable Lisa Murkowski
Chairman, Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Office of Insular Affairs to the questions for the record submitted following the February 6, 2018, legislative hearing before your Committee on S. 2182, the Bikini Resettlement and Relocation Act and S. 2325, the Northern Mariana Islands U.S. Workforce Act.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources

**U.S. Senate Committee on Energy and Natural Resources
February 6, 2018 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Doug Domenech**

Questions from Ranking Member Maria Cantwell

Question 1: Mr. Domenech, in your role as the Assistant Secretary for Insular Affairs you are responsible for administration and oversight over the American Insular areas, including the Northern Mariana Islands. While there are several other federal agencies who have been involved with enforcement of labor laws in the Northern Mariana Islands, when push comes to shove the Department of Interior has the ultimate oversight. What actions has the Department of Interior taken to satisfy this authority?

Answer 1:

Executive Order 12572 provided the Secretary of the Interior with general administrative supervision for the Commonwealth of the Northern Mariana Islands (CNMI) in all matters not the program responsibility of other Federal departments or agencies. The enforcement of immigration and labor laws in CNMI fall clearly within the realm of other Federal departments and agencies and not within the legal authorities of the Department of the Interior.

The Department of the Interior, through the Office of Insular Affairs, provides technical assistance to the CNMI as called for under the Consolidated Natural Resources Act of 2008 (Public Law 110-229), with its limited discretionary funding provided by the Congress. Working closely with the CNMI government, the Office of Insular Affairs provides grants for technical assistance and capital improvement projects that have, in one form or other, contributed to enhancing CNMI's employment and economy.

Question 2: Two weeks ago, we learned the director of the Center for Disease Controls (CDC) resigned because of problematic stock purchases in companies related to the work of the CDC. Just this week, we learned that one month after your confirmation, in October 2017, you bought stock in Compass Minerals. That same year, the Department of the Interior paid Compass \$15,000. In other words, you have the potential to enrich yourself because of decisions of the Department of the Interior. Even if there was nothing illegal committed, there is certainly the appearance of impropriety.

- Why did you enter into a transaction that appears to present a conflict of interest?
- Will you divest of all of your shares in companies that contract with the Department of the Interior?
- How can we trust you will be a responsible steward of taxpayer funds, including funds set up for the people of the Marshall Islands, if you have allowed yourself to be enriched by the Department of the Interior's contracting decisions?

U.S. Senate Committee on Energy and Natural Resources
February 6, 2018 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Doug Domenech

Answer 2a: As the Ranking Member of the Senate Committee with primary congressional oversight of Department of the Interior, I am sure you are very familiar with the Department's stock holdings prohibition list for its employees. As you know, the management of this list is the same now as under the Obama Administration and continues to be updated in the same manner annually by the Department's Office of Ethics. Compass Minerals is not listed, therefore, there is no prohibition to holding this stock, and I am in full compliance with the law and regulations.

The STOCK Act requires all SF 278 filers to report certain transactions within 30 days after receiving notification of any transactions but in no case later than 45 days after such transaction occurred. A transaction report available online (OGE 278 T) covers any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities owned or acquired when the amount of the transaction exceeds \$1000.00. Transaction reports are not required for: real property, widely-held diversified mutual funds, treasuries, life insurance, cash accounts, and TSP.

Interior's Designated Ethics Official (DEO) reviews and approves all stock purchases for Senate confirmed (PAS) officials. The ethics agreement signed by all PAS officials, includes a statement that all PAS will ensure that account managers or investment professionals obtain approval for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 CFR 2640.201(a), and obligations of the US. All stock purchases are reviewed and approved by Interior's DEO.

Answer 2b: I am in full compliance with the law and regulations. I do not own stocks of the Department's Prohibited Stocks list.

Answer 2c: The Marshall Islands people are a great community and I am honored to work with the President and other elected leaders in managing the various Trust Funds available to them. I am also honored to work with the elected Mayor and Council of Bikini to provide them with control over their Trust Fund.

In accordance with 18 U.S.C. § 208(a), I signed an ethics agreement to not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). This applies to me, my spouse and any minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

U.S. Senate Committee on Energy and Natural Resources
February 6, 2018 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Doug Domenech

I have divested my interests in any stocks on the Department's Prohibited List and I complied with my recusal requirements prior to divestiture.

As a Trump Administration political appointee, I have signed the Ethics Pledge (Exec. Order No. 13770) and I am bound by the requirements and restrictions therein in addition to the commitments that I have made in this and any other ethics agreement. Accordingly, I will not participate personally and substantially, for 2 years after appointment, in any particular matter involving specific parties in which a former employer or client of mine is or represents a party, if I served that employer or client during the 2 years prior to my appointment, unless first authorized to participate, pursuant to Section 3 of Exec. Order No. 13770. Moreover, this 2-year prohibition forbids my participation in any meeting or other communication with these entities unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Question 3: In your letter to Mayor Jibas dated November 16, 2017, you explicitly said that the Kili-Bikini-Ejit Council's Rescript does not "affect any statutory provision concerning the Secretary of the Interior's actions with respect to the Trust Fund. Two such provisions are currently extant"; (First), the U.S. Congress enacted legislation whereby the Secretary 'may,' in his discretion, 'approve expenditures not to exceed \$2,000,000 in any year from income for projects on Kili or Ejit.'" Yet in your response to questions from Senator Cortez Masto, you directly contradicted your letter. Which view is that of the Department of the Interior? If it is the view expressed in the letter, why did you disagree in your oral testimony?

Answer: PL 100-446 afforded the Secretary of the Interior the discretion to approve expenditures from the Resettlement Trust Fund not to exceed \$2 million in any year from income for projects on Kili or Ejit. The Secretary of the Interior is not required to veto expenditures. The Department's decision to accept the August Rescript of the Kili-Bikini-Ejit (KBE) Government was consistent with the Department's discretionary authority. The Rescript itself did not amend any statutory provision concerning the Secretary's actions with respect to the Resettlement Trust Fund; rather, it was informative to the Department in electing to forgo exercising its discretionary veto over the Resettlement Trust Fund.

Questions from Senator Mazie Hirono

Question 1: My legislation, the Covering our FAS Allies Act (S. 1391) would restore Medicaid coverage for citizens of the Freely Associated States lawfully residing in the U.S. under the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. As the agency responsible for monitoring and coordinating all U.S. assistance to the FAS, would you support S. 1391 and agree that extending Medicaid coverage to their citizens would help support their welfare as well as the welfare of affected jurisdictions like Hawaii? If a legislative change to Medicaid eligibility is not enacted, could your office provide

**U.S. Senate Committee on Energy and Natural Resources
February 6, 2018 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Doug Domenech**

financial support to affected jurisdictions to cover health care costs incurred for COFA citizens? Would you need additional resources or legislative changes to facilitate such payments?

Answer 1: We have initiated a review of your legislation in order to respond to your question. We are presently unable to state a position without consulting with the other federal agencies that have budgetary and operational jurisdiction over the programs named in your legislation. Any expansion of program services to additional populations would require additional resources.

Question 2: What is the Administration's position on the legislative proposal to modify S. 2182 as outlined in Mr. Niedenthal's testimony?

Answer: The Department only provides formal positions on introduced legislation being considered by the Committee. However, as a general matter, his idea raises additional concerns and has no bearing on the Administration's position on S. 2182.

Question 3: Were any of the Bikini Resettlement Trust funds used to provide health care for Bikinians in the United States including the State of Hawaii? If so how much?

Answer: The Washington, D.C., office of the prior KBE Government attorney formerly operated a health insurance plan for the People of Bikini, regardless of their location. The application of this health insurance plan was principally for those People of Bikini living in the United States, including Hawaii. However, due to the high costs involved, the KBE government terminated this health insurance plan. At no time during the existence of this health insurance plan did KBE Government officials inform the Office of Insular Affairs of how much money the plan spent for the People of Bikini in Hawaii or any other U.S. jurisdiction.

Questions from Senator Catherine Cortez Masto

Question 1: In a 2017 report with the Governor of CNMI, your office recommended that long-term guest workers in the CNMI who have strong ties to the community be allowed a pathway to permanent resident status. Do you still agree with Governor Torres that a path to permanent residency for long-term guest workers is important for the success of the CNMI, and if not, what has changed in the Commonwealth between January 2017, when your office and the Governor's office submitted its 902 report, and now?

Answer 1: The January 2017, 902 report, that was submitted by the last Administration's Special Representative and Governor Torres recommended that long-term guest workers in the CNMI be allowed a pathway to permanent resident status. This issue is part of the overall immigration issues that this Administration is currently working on.

U.S. Senate Committee on Energy and Natural Resources
February 6, 2018 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Doug Domenech

Question 2: Please describe the legal analysis and decision-making process at the DOI that led to the decision to follow the terms of the KBE Council resolution.

Answer 2: In August of 2017, the KBE Council adopted Resolution No. 2017-39 (Rescript), which was transmitted to the Department of the Interior. Under Section 10.1 of the Amended Resettlement Trust Fund Agreement for the People of Bikini, dated October 26, 1988 (the Agreement), the KBE Council had the authority to amend the Agreement. Under the terms of the Agreement, the Department retained the discretion to disapprove of the Rescript. The Department further determined that PL 100-446 granted the Secretary of the Interior the discretionary authority to “approve expenditures not to exceed \$2,000,000 in any year from income for projects on Kili or Ejit”. The Department determined that this discretionary veto was exercised for more than three decades at the request and acquiescence of successive, elected leaders of the KBE local government. The Department elected to honor the wishes of the people of Bikini and its locally elected representatives by not disapproving of the Rescript. The Department also determined that there was no additional statutory authority that required the Department to disapprove of expenditures from the Resettlement Fund.

Question 3: How do you reconcile the Department’s current abdication of authority regarding the Resettlement Trust Fund with the Department’s statutory authority over the trust fund in the future?

Answer 3: The Department has not abdicated its statutory responsibility for the Resettlement Trust Fund. The Department’s position is that the August Rescript of the KBE Government does not affect any statutory provision concerning the Secretary’s actions with respect to the Resettlement Trust Fund. The Department’s accepting the Rescript and thereby returning to the People of Bikini full dominion over their Resettlement Trust Fund is not an abdication of the Secretary’s authority for the Trust Fund as outlined in Public Law 100-446 (Sept. 27, 1988), which gives the Secretary the responsibility to identify the future funding needs of the People of Bikini before the Trust Fund is extinguished and before remaining funds, if any, are deposited in the U.S. Treasury.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 15 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Department of the Interior witnesses Tony Dearman, Director, Bureau of Indian Education, and Michael Black, Acting Assistant Secretary – Indian Affairs, after their appearance before your Committee at the May 17, 2017, hearing on “High Risk, No Reward: GAO’s High Risk list for Indian Affairs.” We apologize for the delay.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

Question From Senator Daines:

1. Mr. Dearman, in your testimony, you set mid-2019 as a goal to implement two recommendations from a 2014 report, which is five years later. What is the holdup?

Response: These recommendations should have been addressed in a more timely fashion. Since taking leadership of the Bureau of Indian Education (BIE) in November 2016, I have assessed our Government Accountability Office-related work to date. BIE leadership has not been satisfied with either the quality or the timeliness of the work performed to analyze the GAO recommendations. As a result, I have directed BIE senior leadership to prioritize implementing all outstanding GAO recommendations as quickly as possible. While I understand the timeframe for comprehensively addressing BIE's outstanding GAO recommendations, including the recommendations you highlight, has been extended, I believe it is prudent that the bureau continue to work toward timely and effectively addressing GAO's recommendations and we are doing so, as discussed in my testimony for this hearing.

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

Question from Senator Cortez Masto:

1. As you may know, Nevada has two BIE schools: Duckwater Shoshone Elementary School and Pyramid Lake Junior/Senior High School. We are all very proud of all of our students, teachers, administrators, and parents. We want the very best for them, and they deserve the very best your department has to offer. Director Dearman, in your written testimony you mentioned that your office is diligently working to address the varying and developing needs of students, including behavioral and mental health support services.

- **Can you please talk further about this partnership with Indian Health Service (IHS) and how you are planning to overcome some of the IHS limitations outlined in the report?**
- **Can you elaborate on your strategic plan to collaborate with local emergency medical services and law enforcement to ensure the safety and wellbeing of students and staff in school?**

Response: In December 2016, BIE, IHS, and Bureau of Indian Affairs (BIA), entered into an Inter-agency Agreement intended to increase access to mental and behavioral health services for students attending BIE schools and youth detained in Office of Justice Services (OJS) facilities. The Agreements allow each agency to establish local partnerships through a Memorandum of Agreement (MOA) between IHS federally-operated mental health programs, BIE-operated elementary and secondary schools, and BIA OJS-operated juvenile detention centers to provide mental health assessment and counseling services, which includes tele-behavioral health services.

Under this 10-year partnership, behavioral health services will be offered at BIE schools and OJS facilities that are located near an available IHS facility. Key staff, including our Student Health Program Specialist, are partnering within the agencies under a National Implementation Team tasked with identifying key contacts to create Regional and Local Implementation Teams. This new collaboration is intended to ensure that the mental and behavioral health needs of our students are being met.

BIE is also collaborating with OJS to provide comprehensive law enforcement oversight for schools. This includes strategic program direction, development of related policies, procedures, standards and guidelines, and program accountability and consistency. In January 2017, BIE began working through the partnership to provide expert law enforcement guidance and direction to local law enforcement officials, school administrators, and tribal leaders in response to criminal matters or emergencies that occur on tribal school campuses or within the immediate vicinity of a tribal school.

**Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017**

Questions for Mr. Dearman from Vice Chairman Udall

GAO High-Risk Report and Recommendations

- 1. The Government Accountability Office (GAO) testified that inclusion on the biennial High Risk report often results in agencies receiving additional management resources from Department leadership and the Office of Management and Budget (OMB). Has the Bureau of Indian Education (BIE) seen increased engagement from the Department of the Interior's (DOI's) Office of the Secretary or OMB since the Bureau's High Risk designation? If so, please summarize any evidence of this increased engagement.**

Response: Upon GAO's identification of BIE as a high-risk agency, the Department has worked closely with the Bureau as it prioritizes accountability and oversight in order to address GAO recommendations, which will increase efficiency and effectiveness.

The Department is supportive of the BIE as it participates in work groups specifically created to address GAO recommendations, such as the Indian Affairs Safety Work Group (Safety Work Group) that includes participants from the Assistant Secretary-Indian Affairs (Indian Affairs) office, Bureau of Indian Affairs (BIA), and Division of Facilities Management and Construction (DFMC). The Safety Work Group has held two workgroup sessions this summer as a means to increase coordination, develop policies and procedures, and address outstanding GAO recommendations in reports GAO-16-313 and GAO-17-421.

The Department has also provided BIE support as it works to increase its direct communication with GAO, which has enhanced BIE's ability to comprehensively address outstanding recommendations. It is the Department's goal that BIE is effective in addressing GAO recommendations as well as coordinating effectively across Federal agencies in order to improve BIE accountability and oversight. As such, the BIE has had consistent contact and works closely with senior leadership within the Department and the Secretary's office to ensure matters highlighted in GAO reports, particularly those critical to directly improving the wellness and safety of students in Bureau-funded schools, are properly addressed in a timely manner.

- 2. A number of the outstanding recommendations for improving Indian Education included in GAO's February 2017 High-Risk Report require action by the Bureau of Indian Affairs (BIA) to fully resolve.' Your testimony provided an outline of BIE's efforts to address these remaining recommendations that included references to "working cooperatively with the leadership within Indian Affairs." Yet, Mr. Black's testimony focused exclusively on addressing the remaining Indian Energy recommendations flagged by GAO in the 2017 High Risk Report. Has BIE seen increased engagement from BIA leadership regarding its role in resolving the remaining GAO recommendations regarding financial oversight and safety inspections? If so, please summarize any evidence of this increased engagement.**

Response: The BIE has worked closely across Indian Affairs, including BIA, in recent months to address outstanding GAO recommendations and improve Bureau operations and service delivery in Bureau-funded schools. Upon GAO's identification of BIE as a high-risk agency, the Bureau coordinated efforts with Indian Affairs to prioritize accountability and oversight in order to address GAO recommendations, which will increase efficiency and effectiveness.

Indian Affairs is supportive of the BIE as it participates in joint work groups specifically created

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

to address outstanding GAO recommendations, such as the Indian Affairs Safety Work Group (Safety Work Group) that includes participants from BIA. The Work Group held two workgroup sessions this past summer as a means to increase coordination, develop policies and procedures, and address outstanding GAO recommendations. Through the Safety Work Group, BIE and BIA staff, alongside DFMC and Indian Affairs, have worked together to ensure that safety inspections are 100 percent completed for the second year in a row as well as to develop policies and procedures to make sure quality improves and supports are in place to assist critical staff, such as safety inspectors. The Safety Work Group will plan subsequent meetings to progress coordinated work. Additionally, Indian Affairs has formed an initial work group specific to address financial oversight across the agencies. This coordination will diminish bureaucratic inefficiencies and promote communication across Indian Affairs.

3. **Shortly following the conclusion of the May 17th Oversight Hearing, GAO released three additional reports regarding the BIE - "*Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies*,"² "*Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects*,"³ and "*Indian Affairs: Further Actions Needed to Improve Oversight and Accountability for School Safety Inspections*."⁴ Within these three reports, the GAO provided a total of 20 new recommendations to improve the delivery of education to BIE students.**
- a. **Please provide a summary and timeline of the Bureau's plans to address each of the 20 recommendations directed at BIE.**

Response: The reports provide ten additional recommendations that BIE must address unilaterally. The other findings, due to agency authority, are directed to other entities within Indian Affairs, or must be addressed by a combination of these entities. BIE now has 21 total outstanding recommendations from past GAO reports as well as those issued in 2017 that it must address.

In reference to the reports mentioned, BIE worked directly with Indian Affairs through the aforementioned work groups to provide formal updates to GAO on August 8, 2017, and August 16, 2017. The three enclosed letters (DOI 60-Day Letter to GAO Report 17-421 IA School Safety; DOI 60-Day Letter to GAO-17-423 Tribal Transport; and DOI 60 Day Letter to GAO Report 17-447 IA School Construction) provide responses to each new GAO recommendation as well as timelines and bureau authority for associated work to be completed.

- b. **Please provide a summary of the efforts BIE is undertaking to work with BIA, and DOI's Office of the Secretary, and OMB to ensure the remaining recommendations from these three reports are addressed in a timely, effective manner.**

Response: BIE worked directly with Indian Affairs to provide updates to GAO on August 8, 2017 and August 16, 2017. The three enclosed letters (DOI 60-Day Letter to GAO Report 17-421 IA School Safety; DOI 60-Day Letter to GAO-17-423 Tribal Transport; and DOI 60 Day Letter to GAO Report 17-447 IA School Construction) provide responses to each new GAO recommendation as well as timelines and Bureau authority for associated work to be completed.

Staff and Leadership Turnover

1. When asked about any continuing limitations placed on hiring by Administration leadership, you testified that the BIE is currently "hiring at all levels." Yet, this response is at odds with statements made by DOI's Office of Budget staff at a May 6, 2017 Committee Briefing and an April 12, 2017 memorandum issued by Associate Deputy Secretary James Cason.
 - a. Please clarify your claim that BIE is "hiring at all levels" in light of the previously noted May 6 statements and April 12 memorandum.

Response: On April 14, 2017, a DOI memorandum provided Department guidance to agencies and bureaus regarding updated hiring controls, detailing that:

- Bureaus and offices could proceed with lateral reassignments or details, except for Senior Executive Service positions.
- Bureaus and offices could proceed with hiring for all positions, outside Washington, DC and Denver, Colorado, at the grade of GS-11 and below.
- Bureaus and offices could proceed with hiring for positions above GS-11 and within Washington, DC and Denver, Colorado if provided a waiver based on how such positions will better support on-the-ground mission delivery.

With regard to BIE hiring, the agency continues to hire at all levels consistent with the guidance provided by the Department. The Department-specific hiring controls also do not affect contract positions funded by the BIE, such as school level teachers. As such, students incur no major disruptions in access to instruction. After the initial hiring freeze, the Bureau has worked consistently and cooperatively with Department leadership in obtaining hiring waivers for filling critical, non-field positions at all levels. For example, the Department provided BIE clearance on August 14, 2017 to hire, or clarify further the need to hire, 39 vacant positions above GS-11 as well as in various duty locations that are critical to improving service delivery. Clearance has been provided to hire additional positions since August. The Bureau continues to coordinate with Department leadership to acquire waivers for any remaining vacancies.

- b. How many total vacancies does BIE currently have? And, what is the breakdown of these vacancies by type (location, grade level, and function)?

Response: At the time of the hearing, the BIE was 42 percent fully staffed with 134 positions filled out of a total of 316 positions (waivers pending), Bureau-wide. Such positions include those in the BIE Director's Office (Central Office), School Operations Division, Division of Performance and Accountability, Associate Deputy Director – Tribally-Controlled Schools, Associate Deputy Director – Bureau-Operated Schools, and Associate Deputy Director – Navajo Schools. Since May 2017, the Bureau is nearly 46 percent fully staffed with hiring continuing to improve service delivery.

- c. What, if any, limitations put in place by the White House, OMB, or DOI's Office of the Secretary exists regarding BIE's ability to fill these vacancies?

Response: As noted in a previous response, the agency continues to hire at all levels consistent with the guidance provided by the Department. In addition, the Department-specific hiring controls did not affect contract positions funded by the BIE, such as school level teachers. As

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

such, students incurred no major disruptions in classroom instruction. After the initial hiring freeze, the Bureau has worked consistently and cooperatively with Department leadership in obtaining hiring waivers for filling critical, non-field positions at all levels.

2. **In its 2017 High Risk Report, GAO identified staffing turnover as an overarching issue facing Indian Education.⁵ For example, several tribally operated BIE schools have informally reported to this Committee that staffing turnover and vacancies at Education Resource Centers (ERCs) make it difficult to receive timely assistance with reporting and compliance questions.**

- a. **How is BIE working to ensure all administrative duties are fulfilled in the face of frequent turnover?**

Response: A major goal of the BIE is to identify, recruit, develop, retain, and empower highly-effective employees at all levels. However, obstacles, such as limited access to housing as well as duty stations located in geographically isolated and impoverished communities continue to impact employee recruitment. While vacancies do persist, the BIE has not experienced exceedingly high turnover rates at its ERCs – only one employee has separated (June 30, 2017) since January 1, 2016. However, as the Bureau continues to fill positions, the BIE is working to streamline hiring practices where possible to increase recruitment as well as ensure existing staff have the administrative support from Central Office to perform their duties effectively.

BIE Central Office, as part of its GAO related work, is developing its comprehensive strategic planning effort to set agency priorities and focus energy and resources to ensure employees are working toward common goals. It is critical that BIE employees are focused on outcomes and results that will help the agency provide improved service delivery, technical assistance, and oversight regardless of staffing levels. Such strategic planning work will also assist the agency as it develops a comprehensive workforce plan that addresses such vacancies and focuses human capital where needed to ensure Bureau-funded schools' needs are effectively addressed in a timely manner. Human capital capacity has historically been an issue for the BIE, so even as the agency works to hire positions to expand such capacity, the agency is working to formalize plans that will also address retention through professional development and standard appraisal metrics.

- b. **How is BIE ensuring federally-operated and tribally-operated Bureau schools receive full support with legal and financial compliance requirements (e.g., completion of annual audits and Individuals with Disabilities Education Act compliance)?**

Response: The BIE is working to ensure existing staff have the administrative support from Central Office to perform their duties effectively as well as ensure employee appraisal metrics increase employee accountability. BIE leadership has tasked management across the Bureau with improving the alignment of appraisal metrics with the services for which employees are tasked to provide, such as assisting in financial compliance, providing technical assistance, and assisting with completion of annual audits. These metrics are critical to reducing waste, fraud, and abuse and utilizing public tax dollars as efficiently and effectively as possible.

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

In addition, BIE is hiring additional budget personnel and fiscal auditors to assist in compliance, and is developing a school visit coordination and information sharing policy that establishes formal procedures for fiscal monitoring and requiring coordination among BIE staff. This will improve technical assistance through regular, on-site audits based on risk elements for federal funding distribution and financial compliance. As part of any risk matrix, such policies and procedures will not alleviate or address all risk but will formalize a protocol for diminishing such risk through coordinated School Intervention Teams from Bureau ERCs and Division of Performance and Accountability staff who work with schools to address areas of greatest need.

- c. How is BIE ensuring the Bureau's staffing plan addresses technical skills gaps (e.g., financial audit expertise) identified by GAO?**

Response: As part of the BIE's reorganization, the BIE is working to increase its capacity and narrow its technical skills gap for financial oversight and fiscal monitoring. Accordingly, the Bureau has prioritized hiring of fiscal monitors, such as auditors and budget personnel. The BIE has advertised such positions for hiring to increase capacity to address such gaps. Among other areas, another focus has been increasing data-driven decision-making across the Bureau through improved data collection. The Bureau is working to hire several Education Research Analysts and three Native American Student Information System (NASIS) positions that will improve the Bureau's collection and use of key data metrics critical to informed decision-making that addresses areas of greatest need.

BIE School Accountability

- 1. The most recent school and Bureau accountability data provided on the BIE website dates to SY2012-2013.⁶ The Committee is unaware of any other locations where the Bureau might have published accountability data for the three school years completed since SY2012-2013 concluded and required under Section 1111 of the Elementary and Secondary Education Act through August 1, 2016.⁷**
- a. Please provide a copy of all statutorily required school accountability data for SY2013-2014, SY2014-2015, and SY2015-2016.**

Response: The Bureau is working to update and post some of the additional, required public reporting on school accountability. However, most information has not yet been aggregated and remains partially incomplete. Recently, leadership has refocused attention to increasing data-driven decision-making across the Bureau through improved data collection. As mentioned previously, the Bureau is working to hire several Education Research Analysts and three NASIS positions specifically focusing on data that will improve the Bureau's collection and use of key data metrics critical to supporting the needs of students attending BIE-funded schools.

- b. Please provide an overview of how BIE ensures parents, tribes, and Congress has timely access to this information.**

Response: The BIE has hired personnel to serve as the Communication Specialist to address and update communication outlets going forward. It is critical that the Bureau is transparent

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

and efficient in delivering information, and this is a key component to achieving this goal. The BIE is working with an ED contractor, the Center for Standards and Assessment Implementation (CSAI), to develop procedures to ensure timely data collection and reporting take place, which will then be externally communicated to stakeholders.

- c. **Does BIE have any other student outcome related data (e.g., graduation rate trends, absenteeism trends, etc.) that it can share with the Committee? If so, please provide it here or provide a firm timeline of when such information can be made available to the Chairman and the Vice Chairman.**

Response: As noted in response to a previous question, the Bureau is working to bring recent data sets up to date. Currently, an analysis of longitudinal data trends is unavailable until such data strands are collected and verified. However, the Bureau has enclosed the following 2015 Bureau of Indian Education Report on Student Achievement and Growth from the Northwest Evaluation Association for the Committee's review. Its results suggest that BIE students have shown some improvements over time in achievement and growth rates, most notably in mathematics and for students attending earlier grade levels. However, gaps persist and BIE remains committed to improving service delivery that will help narrow the gap for students attending Bureau-funded schools.

2. **Title I of the Every Student Succeeds Act (ESSA) requires states to design and implement an accountability system to measure school quality and performance in consultation with a variety of stakeholders.⁴ The Department of Education (ED) indicates on its website that BIE, acting in its capacity as the State Education Agency (SEA) for BIE-funded schools, provided notice of intent to submit its state accountability plan to ED on September 18, 2017.⁹ Yet, as on the date of this hearing, the BIE's webpage on the Bureau's ESSA State Plan is completely blank.¹⁹**

- a. **What is the status of the BIE state plan? Please provide a summary of any BIE's coordination between BIE and ED on this issue and a description of all relevant consultations undertaken by BIE to date on development of a state accountability plan.**

Response: While ED officials have expressed a view that the BIE is not required to submit a State Plan under ESSA, BIE Director Dearman announced that the BIE would develop a State Plan as a means to facilitate a transition to ESSA requirements and ensure the development of a coherent federal education system across the 23 states in which BIE facilities operate. The BIE notified ED via email on January 7, 2017 that it would submit a State Plan. However, many of the elements of the plan would relate to standards, assessments, and accountability, and BIE is required by the ESEA to conduct negotiated rulemaking to establish standards, assessments, and an accountability system that is consistent with the ESSA changes to the ESEA.

As the Department works to establish the Negotiated Rulemaking Committee outlined below to negotiate and develop a proposed rule, in accordance the Negotiated Rulemaking Act, timelines have had to shift to provide adequate time for review by the Administration. Nevertheless, work on the State Plan continues as a means for addressing a key part of the BIE Strategic Plan for improving student outcomes and increasing coordination across BIE-funded schools. Once drafted, BIE will engage stakeholders, including tribal community members, school personnel, and parents, to provide input. Formal tribal consultation will take place following the

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

stakeholder engagement phase to ensure tribes have a document for which to provide comments and have meaningful consultation.

Additionally, BIE continues to have a close and consistent working relationship with ED through the interagency collaborative work group that meets bi-weekly. Through this coordination, BIE and ED have entered into an interim Memorandum of Understanding that ensures ED Title funding continues to support BIE students for SY 2017-18.

- b. Please provide an overview of BIE's efforts to comply with ESSA as a whole and outline how the Bureau has worked with ED to ensure full compliance moving forward.**

Response: To meet its obligations, the BIE will: (1) amend its existing standards, assessments, and accountability regulations through negotiated rulemaking, and (2) solicit stakeholder and tribal input through consultation regarding the BIE State Plan. The BIE has elected to adopt a State Plan that will work to improve the BIE's support of Bureau-funded schools. Through tribal consultation and solicitation of stakeholder feedback, the BIE will ensure ESSA requirements are met.

Section 8204(c), as amended by the ESSA, directs the Secretary of the Interior, through negotiated rulemaking, to update the BIE standards, assessments, and accountability system. On November 9, 2015, the BIE published a notice of intent (80 FR 69161) requesting comments and nominations for tribal representatives for the Negotiated Rulemaking Committee (Committee). During transition, the initial formulation of the Committee was postponed in order to provide incoming Department staff adequate time to review prior work. In August 2017, the BIE was provided clearance to move forward with re-initiating the Committee and working and consulting with stakeholders to determine membership and subsequent steps. More information is forthcoming regarding timing of the notice that will clarify consultation, membership, meeting dates, and other pertinent information.

Ultimately, the Committee will recommend revisions to the existing regulations (25 CFR Part 30) to replace the NCLB Adequate Yearly Progress regulatory language and implement the Secretary's statutory responsibility to define the standards, assessments, and accountability system, consistent with ESSA. BIE continues to have a close and consistent working relationship with ED through the interagency collaborative work group that meets bi-weekly to ensure full compliance with ESSA. The BIE and ED consult frequently on a range of topics and direct communication includes electronic and telephonic correspondence.

School-based Health Clinics

- 1. RADM Chris Buchanan's testified that IHS supports nine direct-service and eight tribally-operated, school-based health clinics. His testimony provides no details as to whether these clinics are located in schools operated by Local Education Agencies (LEAs) or by the BIE.**
- a. Are any of these 17 health clinics located in BIE schools? If so, please provide a list of those schools.**

Response: The BIE Student Health Program Specialist conducted site visit assessments of

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

BIE-funded schools in the fall of 2017 to determine what health and behavioral health services were being provided by the Indian Health Service (IHS). IHS has identified several BIE schools as pilot sites for school-based health clinics. BIE is excited to collaborate with IHS to establish school-based clinics so critical health and behavioral health services are provided to our students.

In December 2016, the Indian Health Service (IHS) and BIE entered into an inter-agency agreement intended to increase access to mental and behavioral health services for students attending BIE-funded schools. This 10-year partnership allows each agency to build up local partnerships through Memoranda of Agreement (MOA) among local IHS mental health programs and BIE-funded schools in order to provide on-site mental health assessment and counseling services to BIE students. For information regarding general school-based health clinics as well as the MOA work, BIE recommends the Committee work with IHS, the designated lead agency, for further clarification.

b. Is BIE aware of any IHS-supported school-based health clinics previously operating on a BIE school or dormitory campus?

Response: The BIE defers to IHS, as lead agency, for further clarification and information regarding general school-based health clinics as well as the MOA work.

2. This Committee has heard from several tribes and BIE school community members from several different parts of Indian Country who are interested in opening IHS-supplemented school-based health clinics in a BIE-funded school or dormitory. However, representatives from these tribes and communities report that regional BIE leadership rejected the idea.

a. Is BIE aware of any requests by tribes to open IHS-supported school-based health clinics within a BIE-funded school or dormitory? If so, please provide any pertinent information relating to such requests (e.g., date request was received, name of the BIE line office/resource center that received the request, and BIE's response to the request).

Response: As IHS and BIE coordinate and work together under the MOA to better support on-site services to BIE students, BIE leadership has been supportive of such work and is unaware of the aforementioned outreach. The Bureau will work with its management team to determine if such requests were made and, if so, what actions were taken in response. We look forward retrieving more information and providing an update when possible.

b. What barriers – if any – exist to BIE working collaboratively with tribes and IHS to open these clinics? For example, would BIE have concerns about liability or operations/maintenance expenses of the clinic space?

Response: There may be barriers, which vary by facility depending on the availability of local medical staff, space at the school facility, current state of local partnerships (BIE/IHS, tribe, and school), as well as unique issues faced by personnel, such as community support. Additional barriers include the dissemination/sharing of sensitive student/patient data and significant communications issues at the local site level. Despite these and future barriers that may develop, BIE is dedicated to ensuring that the health and behavioral health needs of our

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

students are met.

c. Can BIE provide any suggestions to overcoming those barriers identified above?

Response: BIE is committed to working with its partners, including IHS, to provide technical assistance and support to schools. This workgroup would also provide annual updates and progress reports as necessary. BIE will also conduct a comprehensive needs assessment and thorough investigation of the current state regarding school-based health clinics and associated barriers/solutions. In addition, BIE has established a new position to further assist with the coordination of student behavioral health and has hired a Student Health Program Specialist.

Medicaid Funding in BIE Schools

- 1. In general, the Medicaid Program allows school districts to provide Early Periodic Screening Diagnosis and Treatment (EPSDT) services and allows the schools to directly bill the Program for medically necessary services related to Individual Education Plans (IEPs). Does BIE coordinate with states and/or the Center for Medicaid Services (CMS) to receive allowable reimbursements for delivery of these services? If so, please provide a summary of how BIE interacts with the Medicaid Program and an estimate of the level of Medicaid funding received by the Bureau.**

Response: BIE is aware that while some Bureau-funded schools have worked through the process of directly billing Medicaid for services, the agency itself has not done an adequate job of providing professional development for such interaction with the Medicaid program. The process can be cumbersome and capacity at various schools differs. The Bureau will work as part of its strategic planning to include the development of a formal policy and associated procedure as a means for collecting data and improving the health and welfare of BIE-funded students. Because this currently takes place on a local level, the Bureau does not have adequate data to present at this time.

1 U.S. Gov't Accountability Office, GA0-17-317, High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others (2017).

2 U.S. Gov't Accountability Office, GA0-17-423, Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies (2017).

3 U.S. Gov't Accountability Office, GA0-17-447, Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects (2017).

4 U.S. Gov't Accountability Office, GA0-17-421, Indian Affairs: Further Actions Needed to Improve Oversight and Accountability for School Safety Inspections (2017).

5 U.S. Gov't Accountability Office, GA0-17-317, at 205.

6 *School Report Cards*. BUREAU OF INDIAN EDUCATION <https://bie.ed.gov/About/Reporting/SchoolReportCards/index.htm> (accessed on May 17, 2017).

7 Every Student Succeeds Act, Pub. L. No. 114-95, § 5(e) (1) (A), 129 Stat. 1802, 1806 (2015).

8 Every Student Succeeds Act, Pub. L. No. 114-95, § 1000 et seq., 129 Stat. 1802, 1814-1913 (2015).

9 *ESSA State Plan Notice of Intent to Submit*, U.S. DEPT. OF EDUCATION, <https://www.ed.gov/ESSAStatePlan>.

Questions For Mr. Black From Vice Chairman Udall

GAO Reports and Recommendations

1. **The Government Accountability Office (GAO)'s February 2017 High-Risk Report included several unresolved recommendations for the Bureau of Indian Affairs (BIA) to help ensure that Bureau of Indian Education (BIE) schools provide safe and healthy facilities for students and staff. GAO testified at this Oversight Hearing:**

"As of April 2017, the agency had not provided documentation that the inspection information that its safety personnel collect and report to BIE schools is complete and accurate. In addition, our preliminary findings from ongoing work since February 2017 point to continued problems with Indian Affairs' oversight of safety inspections at BIE schools."

Despite these remaining Indian Education-related recommendations for BIA, your testimony focused exclusively on addressing the remaining Indian Energy-related GAO recommendations.

- a. **Please provide a summary and timeline of the Bureau's plans to address each of these unresolved recommendations.**

Response: On July 17, 2017, and August 16, 2017, Indian Affairs (IA) and the Department of the Interior's Office of Financial Management provided GAO updates on progress on the BIE open recommendations. While none of the recommendations have been closed to date, GAO acknowledged the progress made and that some of the recommendations are close to full implementation.

Indian Affairs has taken the following actions to address the GAO recommendations concerning school safety:

- In FY 2016, 100 percent of the BIE schools were inspected, reports were issued and deficiencies were recorded for remediation.
- Performance standards for SES Regional Directors and safety personnel were revised in FY 2016 and FY2017 that added specific performance elements and measures to ensure safety inspections are performed annually.
- In FY 2017, Indian Affairs established a Safety Work Group to enhance the school safety program and engage all the stakeholders to ensure a successful Indian Affairs integrated safety program.
- In FY 2017, policy guidance and handbooks were issued and disseminated to

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

all Indian Affairs personnel responsible for school safety and remediation of the deficiencies.

- Indian Affairs tracks monthly safety inspections performed and disseminates the progress to the BIE and BIA Director and Regional Directors.
- Indian Affairs is currently developing a mandatory course curriculum for personnel responsible for performing safety inspections.
- In FY 2017, BIE stood up their School Safety Office and is continuing to recruit for their vacant positions.

b. Has BIA established a process to routinely monitor the quality and timeliness of all school inspection reports? If so, please provide an explanation of this process.

Response: The BIA will amend the 2017 safety performance standards for Safety Inspectors to comply with the standards in the recently updated Indian Affairs Safety, Health and Accessibility Inspection/Evaluation Guidelines and the Indian Affairs Fire Systems Inspection, Testing and Maintenance Guidelines.

In addition, the Division of Safety and Risk Management (DSRM), BIA, and BIE will develop and formally publish a comprehensive quality performance standard for inspection reports and develop a formal and uniform process of monitoring the quality of safety inspection reports.

The BIE and BIA, in coordination with the DSRM, will develop and implement comprehensive and uniform Performance Appraisal Plans for all Indian Affairs safety personnel in FY 2017, to include a component addressing the timeliness of safety inspection reports submission. The first-line supervisors will then hold employees accountable based on the timeliness data collected by DSRM.

c. What controls has BIA put in place to ensure that any high-risk safety and health deficiencies identified in school inspections are remedied in a timely manner?

Response: Office of Facilities, Property, and Safety Management (OFPSM through the Division of Facilities Management and Construction (DFMC) coordinates with DSRM, BIA and BIE to identify high risk items included in safety inspection reports. Once identified, DFMC/OFPSM has supplemental funding programs (major and minor Improvement & Repair, Emergency, Fire, Environmental) that provide funding for correction of high risk safety and health deficiencies. DFMC/OFPSM, in coordination with DSRM, BIA and BIE, also prioritizes safety, health and accessibility deferred maintenance deficiencies for annual Improvement and Repair funding provided to the Regions and Sites. DFMC/OFPSM has an established contract for Condition Assessments that also identifies safety and health deficiencies and completes any outstanding abatement plans during site

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

visits.

d. Please provide a summary of how BIA and BIE are working to improve inter-Bureau coordination on safety inspections, health and safety issue remediation, and operations/maintenance activities.

Response: The BIE has worked closely across Indian Affairs, including with BIA, in recent months to address outstanding GAO recommendations and improve Bureau operations and service delivery in Bureau-funded schools. Upon GAO's identification of BIE as a high-risk agency, the Bureau coordinated efforts with Indian Affairs to prioritize accountability and oversight in order to address GAO recommendations, which will increase efficiency and effectiveness.

Indian Affairs is supportive of the BIE as the agency participates in joint work groups specifically created to address outstanding GAO recommendations, such as the Indian Affairs Safety Work Group that includes participants from BIA. The Work Group held two sessions this past summer as a means to increase coordination, develop policies and procedures, and address outstanding GAO recommendations. Through the Work Group, BIE and BIA staff, alongside DFMC and Indian Affairs, have worked together to ensure that safety inspections are 100 percent completed for the second year in a row as well as developing policies and procedures to make sure quality improves and that supports are in place to assist critical staff, such as safety inspectors. The work group will plan subsequent meetings for the fall to ensure progress continues to be made on coordinated work. Additionally, Indian Affairs has formed an initial work group to specifically address financial oversight across the agencies. This coordination will diminish bureaucratic inefficiencies and promote communication across Indian Affairs.

2. GAO additionally testified that inclusion on the biennial High Risk report often results in agencies receiving additional management resources from Department leadership and the Office of Management and Budget (OMB). Has BIA seen increased engagement from the Department of the Interior's (DOI's) Office of the Secretary or OMB since the High Risk designation? If so, please summarize any evidence of this increased engagement.

Response: Yes, as indicated in a previous response, the Department's Office of Financial Management has been involved in the July and August meetings with GAO. Also, on a monthly and quarterly basis, DIEA provides and discusses the status of all GAO and OIG recommendations with the Office of Financial Management. Additionally, representatives from the Department's Assistant Secretary for Policy, Management and Budget attended the July 17, 2017, meeting with GAO and IA senior leadership.

**Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017**

1 U.S. Gov't Accountability Office, GAO-17-317, High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others (2017).

3. **Shortly following the conclusion of the May 17th Oversight Hearing, GAO released three additional reports regarding BIE education-related functions - "Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies,"² "Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects,"³ and "Indian Affairs: Further Actions Needed to Improve Oversight and Accountability for School Safety inspections."⁴ Within these three reports, the GAO provided a total of 20 new recommendations to improve the delivery of education to BIE students.**

- a. Please provide a summary and timeline of the Bureau's plans to address each of the 20 recommendations directed at BIA.**

Response: BIA provided a 60-day report to GAO and members of Congress on August 9, 2017, describing how BIA will partner with stakeholders in implementing each of the recommendations and detailing the timelines (including dates and responsible persons) for addressing each of the recommendations. BIA is also coordinating with the Federal Highway Administration (FHWA) and Tribal Transportation Program Coordinating Committee (TTPCC) on the proposal for addressing recommendations and responses.

- b. Please provide a summary of the efforts BIA is undertaking to work with BIE, and DOI's Office of the Secretary, and OMB to ensure the remaining recommendations from these three reports are addressed in a timely, effective manner.**

Response: OFPSM is coordinating with DSRM, BIA and BIE to update policies, guidelines, performance plans and provide trainings for site personnel in Safety & Health, Accessibility, O&M services/activities, Improvement & Repair and other supplemental program funding guidelines and requirements. Training sessions have been posted on relevant websites for access by anyone needing training or for refresher trainings.

Staff and Leadership Turnover

1. **When asked about any continuing limitations placed on hiring by Administration leadership, you testified that the BIA and BIE are subject to certain hiring restrictions depending on vacancy grade-level and location.**

- a. How many total vacancies does BIA currently have? And, what is the**

**Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017**

breakdown of these vacancies by type (location, grade level, and function)?

Response: The Office of Human Capital Management office has identified 1,003 vacancies BIA-wide, as of August 15, 2017 (see spreadsheet).

- b. What, if any, limitations put in place by the White House, OMB, or DOI's Office of the Secretary exists regarding BIA's ability to fill these vacancies?**

Response: The Departmental Hiring Controls currently allow for the filling of vacancies at the GS-11 grade level and below located outside of the Washington, D.C., and Denver, Colorado, metropolitan areas. Hiring for all positions in the Washington, D.C., and Denver, Colorado, metropolitan areas is allowed with the granting of a waiver by the Secretary's Office.

- 2. In its 2017 High Risk Report, GAO identified workforce planning- including frequent turnover and high vacancy rates- as an overarching issue facing Indian Affairs.⁵ For example, several tribally operated BIE schools have informally reported to this Committee that staffing turnover and vacancies at Education Resource Centers make it difficult to receive timely assistance with reporting and compliance questions.**

- a. How is BIA working to ensure all administrative duties are fulfilled in the face of these workforce challenges?**

Response: During workforce planning efforts to address administrative duties and technical skill gaps, the BIA conducted a wide-spread review of components on optimal human capital levels required in relation to the services provided; gaps in talent and performance requirements; critical skills, functions and occupations to retain; and positions that should/could be eliminated or restructured/re-staffed to meet BIA's incremental goals of downsizing and reducing unnecessary processes and overlapping and redundant authorities/controls. As a result of the review, the BIA identified a need to restructure the organization to achieve near-term workforce reductions and allocate the resources where the needs are greatest. The BIA plans to consolidate programs and functions; realign functions to improve efficiency by eliminating overlapping responsibilities from central offices and other units where appropriate; relocate or reassign personnel to different duty stations and program areas; streamline supervisory staff; restructure positions to correct skill imbalances and/or develop leadership; eliminate positions and functions that are redundant and obsolete as a result of automation and changing job competency requirements; utilize career ladder positions to establish a balanced workforce; and reduce grade levels throughout all locations across all the organization. To implement some of these changes, the BIA is also requesting the authority to offer Voluntary Separation Incentive Payment (VSIP) and

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

Voluntary Early Retirement Authority (VERA). These actions and use of these authorities will allow BIA to implement and transition to more efficient Regional Office operations along with facilitating the effective delivery of services to our customers. They will allow the agency to achieve more efficient alignment of mission related operations and more consistent management of services across the organization.

b. How is BIA ensuring the Bureau's staffing plan address the technical skills gaps (e.g., real estate management) identified by GAO?

Response: The BIA conducted a wide-spread review of components on optimal human capital levels required in relation to the services provided; gaps in talent and performance requirements; critical skills, functions and occupations to retain; and positions that should/could be eliminated or restructured/re-staffed to meet BIA's incremental goals of downsizing and reducing unnecessary processes and overlapping and redundant authorities/controls. As a result of the review, the BIA identified a need to restructure the organization to achieve near-term workforce reductions and to focus resources where the needs are greatest. As a result, the BIA plans to consolidate programs and functions; realign functions to improve efficiency by eliminating overlapping responsibilities from central offices and other units where appropriate; relocate or reassign personnel to different duty stations and program areas; streamline supervisory staff; restructure positions to correct skill imbalances and/or develop leadership; eliminate positions and functions that are redundant and obsolete as a result of automation and changing job competency requirements; utilize career ladder positions to establish a balanced workforce; and reduce grade levels throughout all locations across all the organization. To implement some of these changes, the BIA is also requesting the authority to offer Voluntary Separation Incentive Payment (VSIP) and Voluntary Early Retirement Authority (VERA).

² U.S. Gov't Accountability Office, GA0-17-423, Tribal Transportation; Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies (2017).

³ U.S. Gov't Accountability Office, GA0-17-447, Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects (2017).

⁴ U.S. Gov't Accountability Office, GA0-17-421, Indian Affairs: Further Actions Needed to Improve Oversight and Accountability for School Safety Inspections (2017).

⁵ U.S. Gov't Accountability Office, GA0-17-317, at 216.

Energy

I. While BIA acknowledged in its testimony that "a survey is an important step in developing a full inventory of trust resources," it also conceded that the federal government has not yet fully surveyed all Indian reservation lands. The BIA stated that "cadastral survey inventories are being evaluated and FY17 survey requests have been approved for funding and completion by BLM."

a. Has BIA identified the extent to which trust lands do not have accurate surveys?

Response: While there is no inventory of unsurveyed lands, we know that there are significant areas of Indian lands that have not been surveyed, such as the Navajo reservation and certain tribal lands within the Eastern Region's jurisdiction. We have an inventory of survey needs identified by the BIA Regions in coordination with BLM, that are the result of proposed real estate development projects, zoning, trespass issues (boundary establishment), litigation needs and legislative mandates.

b. Does BIA know what resources are needed to complete these surveys?

Response: Funding for the line item that covers Real Estate Services (RES) projects, including cadastral surveys, is \$2.7 million. Our inventory of survey needs includes surveys for approximately 5,000 projects. Funding is also required to fulfill BIA's trust responsibility and Fiduciary Trust Model components: BLM Indian Land Surveyor program, Certified Federal Surveyor program, Enhance Public Lands Survey System in Indian Country, and development of a cadastral-based geographic information system.

c. Please list and describe the FY17 survey requests that have been approved for funding and completion by BLM.

Response: BLM has approved for funding and completion the surveys mandated by the Nevada Native Nations Land Act (NNNLA), which required the new trust lands (70,000 acres) for the tribes involved in the NNNLA to be surveyed in 18 months (i.e., by the end of FY18).

2. When asked about GAO's finding that BIA did not have a documented process or the data needed to track its review and response times, the BIA stated that its experts are working to modify TAAMS. BIA further explained that these modifications may incorporate "the key identifiers and data fields needed to track and monitor review and response times for oil and gas leases and agreements."

a. BIA mentioned taking steps to track and monitor oil and gas leases and agreements. Is the agency also taking steps to track and monitor other energy-related documents that must be reviewed by BIA, such as ROW agreements?

Response: Yes. Rights-of-way are being tracked and monitored, a process that was implemented on April 21, 2016, the effective date of the revised 25 CFR Part 169

**Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017**

regulations. The revised Part 169 regulations impose deadlines for BIA action on requests for rights-of-way.

- b. Is the agency taking steps to track and monitor documents related to environmental reviews, like those associated with the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act?**

Response: The agency tracks environmental reviews under NEPA through the NEPA Tracker, a central repository for tracking NEPA Actions across the organization. The system standardizes the NEPA action tracking process, improves data call efficiency, makes the NEPA action process more transparent, improves NEPA Action data analytics, and minimizes impacts of data calls. NEPA Coordinators are required to enter all NEPA Actions into the NEPA Tracking System, effective September 1, 2012.

- 3. The BIA also stated that it is in the process of evaluating and reviewing the current realty tracking system and TAAMS to improve efficiencies and timeliness in processing workloads. Yet, because multiple entities within the Department must review modifications to data systems, BIA intends to ask GAO for an extension of time to address this recommendation.**

- a. With what other entities must the Department coordinate when reviewing the proposed modifications?**

Response: TAAMS enhancements are programmed and implemented after approval by the TAAMS Change Management Board. The Board has authority to approve the change. If, however, the enhancement is a major development, it must be approved by the Department's Chief Information Officer.

- 4. The GAO recommended that DOI provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to the Department as unclear.⁶ The BIA testified that the Department, through the Office of Indian Energy and Economic Development, will issue guidance on those provisions of TERA that tribes identified as unclear.**

- a. Will the guidance include clarification for "inherently federal functions"?**

Response: The Office of Indian Energy and Economic Development (IEED) has placed on its web site for tribal review a description of the technical assistance it will furnish tribes that are interested in programs, functions, services and activities (PFSAs) associated with the TERA regulations that Tribes can contract for under the Indian Self-Determination and Education Assistance Act, and PFSAs associated with the TERA regulations that the Interior Secretary must perform: <https://www.bia.gov/as-ia/ieed/division-energy-and-mineral-development/tribal-toolbox/demd-and-office-of-solicitor>

To further clarify the TERA approval process, IEED plans to collaborate with the

Committee on Indian Affairs Oversight Hearing
GAO High Risk Indian Programs
May 17, 2017

Department's Office of the Solicitor during calendar year 2018 to publish as part of IEED's ongoing online series "Tribal Economic Development Principles at a Glance," a primer on the TERA approval process.

Past IEED primers can be accessed at; <https://www.bia.gov/as-ia/ieed/online-primers-economic-development-glance>.

b. What other provisions does the Department intend to include in the proposed guidance?

Response: Because "inherently federal functions" can only be defined on a case-by-case basis, it is not possible to compile any kind of list of these functions or provide meaningful examples. IEED is inviting tribes to query the office on these issues as they arise from real-world circumstances. The GAO report also identifies as "unclear" what happens when tribal regulations enacted pursuant to a TERA conflict with federal regulations. IEED would work with the Solicitor to provide a response based on the particular circumstances of each specific inquiry on this matter.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 20 2018

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by Mr. John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, following his appearance before your Committee at the September 13, 2017, hearing on “High Risk Indian Programs: Progress and Efforts in Addressing GAO’s Recommendations.” We apologize for the delay.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Ranking Member

Questions for Mr. Black
From Vice-Chairman Udall

Inter-Agency Coordination: Impact of Zinke Reorganization on the Indian Energy Service Center

1. The GAO reported that the BIA continues to fail in coordinating with other agencies that play a role in the development of Indian energy, like Fish and Wildlife Service, the Army Corps of Engineers, and the Environmental Protection Agency. As a result, the Service Center does not serve as the central point of collaboration/coordination as originally envisioned. Potentially compounding matters, Secretary Zinke floated a proposal at a House Appropriations hearing to reorganize the Department into a system modeled on the military's joint command model that would shift employees from D.C. and regional headquarters offices to field locations. There are concerns that Secretary Zinke's proposed reorganization of Interior's sub-agencies will further complicate or delay attempts to better coordinate within Interior the permitting and approval of Indian energy projects. In addition, tribes have reported that Interior's consultation with them on these moves is limited, if it happens at all.
 - a. **How will the proposed reorganization of the Department of the Interior affect ongoing efforts to make sure agencies are coordinating with the Service Center?**

Response: The Indian Energy Service Center (IESC) is a multi-agency office comprising Bureau of Indian Affairs (BIA), the Office of Natural Resource Revenue (ONRR), and the Bureau of Land Management (BLM) staff components that provide support of Indian energy development on Indian lands. The Department will continue efforts to improve coordination among bureaus in support of tribal management of energy resources.

- b. **The Indian Energy Service Center was a result of robust collaboration between Interior and tribes. To the extent the proposed reorganization impacts the Service Center, will the BIA consult with tribes to limit adverse impacts to coordination?**

Response: The Department does not anticipate any adverse impacts to coordination and services resulting from the proposed reorganization. The BIA has initiated discussions with Indian Country and will continue with formal tribal consultations regarding any proposed adjustments to the regional field organizations serving the BIA and BIE.

IT Infrastructure: Energy Lease Review and Response

1. In its 2015 report, GAO found that BIA did not have a clear system for or the data needed to track its review and response times for the approval of leases, rights-of-way, and appraisals for energy development on Indian lands. The BIA must be able to track its review and response times to ensure the approval process is efficient, transparent, and meets the needs of tribes that seek to utilize their natural resources.

- a. **It is absolutely essential that the process for tracking review and response times is comprehensive. Can you confirm that the process will include all documents that need to be approved before and after resource development can occur?**

Response: We have made progress on this issue, and tracking some data from leases, rights-of-way, and mineral-related agreements (Communitization agreements and Unit agreements) is in place for BIA. This remains an ongoing process.

IT Infrastructure: GIS Mapping of Indian Energy

1. GAO identified issues with outdated and deteriorating equipment, technology, and infrastructure at BIA, which has led to the inefficient management of Indian energy resources. One recurring problem for the BIA, and one that has existed for years, is inadequate information about ownership over surface and mineral rights. The BIA has stated its intent to develop a national dataset of all Indian land tracts and boundaries, but has not provided a timeline-or even what resources are necessary-to complete this survey. GAO found, for example, that some tribes couldn't pursue development opportunities because BIA did not have an inventory of the tribe's energy assets available. GAO recommended that Interior incorporate mapping technology that would greatly increase the agency's efficiency.

- a. **Can you describe how Interior has updated its mapping technology?**

Response: In response to the Government Accountability Office's May 2017 Report, BIA has taken steps to integrate geographic information system (GIS) technology into the Trust Asset and Accounting Management System (TAAMS).

Version 1.0 of TAAMS "Map Viewer" was placed into production and is currently available for use as of August 31, 2017. A demonstration of the capabilities of the Map Viewer was performed on September 14, 2017, for GAO program auditors. On September 13, 2017, the Assistant Secretary reported to the Senate Committee on Indian Affairs on this accomplishment and submission of the closure package to the GAO on this recommendation.

Program level staff and tribes are now able to view and print maps from TAAMS that can be shared with landowners and enable managers to make informed decisions regarding energy resources in a timely manner.

The Map Viewer, in conjunction with the TAAMS ownership and encumbrance reports, provide program level managers with the information regarding title and restrictions for making timely energy resource decisions. There are 193,487 Indian land tracts that are viewable through the Map Viewer and 21,280 tracts which must be converted into a spatial representation as resources permit. Please refer to the table below for statistics by Region.

BIA Region	Tracts Visible in TAAMS Viewer 8/30/21017	Tracts Remaining that Require Spatial Conversion to be visible in Viewer 8/30/2017
Eastern (LAC 0-99)	141	200
Northwest (LAC 100-199)	26,410	5,577
Rocky Mountain (LAC 200-299)	46,804	3,951
Great Plains (LAC 300-399)	61,063	2,437
Midwest (LAC 400-499)	7,844	3,111
Pacific (LAC 500-599)	2,878	844
Western (LAC 600-699)	12,664	859
Southwest/Navajo (LAC 700-799)	7,228	1,330
Southern Plains (LAC 800-899)	9,818	862
Eastern Oklahoma/Alaska (LAC 900-999)	18,637	2,109
Totals	193,487	21,280

Additionally, new land area boundary representations (Reservation, Rancheria, Public Domain Allotment, etc.) are under development and are made viewable in the Map viewer as they are completed. Nationally, boundary data for the current 333 federally recognized tribal land areas, referenced in the following table, are expected to be completed by Spring of FY18.

Region	Total Land Area Boundaries by Region
Rocky Mountain	7
Midwest	37
Northwest	45
Great Plains	16
Pacific	105
Eastern	30
Eastern Oklahoma	2
Southern Plains	6
Southwest	26
Western	56
Navajo	3
Total	333

The procedure for developing the data is described in the Indian Land Tract and Land Area Boundary Mapping Training Guide. The BIA plans to continue to advance the Map

Viewer to include other nationally stewarded and standardized geospatial datasets to support energy development.

b. How do initiatives like updating IT infrastructure and creating new planning processes impact the resources you have available for providing services to tribes?

Response: Initiatives for updating IT infrastructure are important and required to address limited and aged IT network infrastructure, which impact the BIA resources for providing timely services to tribes. TAAMS services, for example, are often delayed due to high usage, limited data line capacity, remote locations and restricted access. Further, planning processes such as developing national geospatial databases with rigorous standards are needed but are resource intensive and require expertise in GIS.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 22 2018

The Honorable Doug LaMalfa
Chairman, Subcommittee on Indian, Insular
and Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to the questions received by John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, after his appearance before your subcommittee at the hearing on H.R. 212 “*Expediting Funding for Efficient Contracting Tribes Act*,” H.R. 2320, “*Samish Indian Nation Land Conveyance Act of 2017*,” and H.R. 3225, “*Oregon Tribal Economic Development Act*.”

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Norma Torres
Ranking Member

Committee on Natural Resources
 Subcommittee on Indian, Insular and Alaska Native Affairs
 Legislative Hearing
 November 15, 2017

Questions from Chairman Bishop

1. **At the subcommittee's hearing on November 15, 2017, Samish Indian Nation Chairman Tom Wooten indicated in his oral testimony that the Samish Indian Nation has nine fee- to-trust applications pending before the Bureau of Indian Affairs (BIA). For each of these applications, please provide the following to the Committee:**
 - a. **A description of the parcel.**
 - b. **The date that the application was submitted.**
 - c. **Whether the application is complete, and if not, what additional documents are needed to complete the application(s).**
 - d. **Your best estimate of when the BIA will make a determination on the application(s).**

Response: There are currently ten Fee-to trust Applications with the Bureau of Indian Affairs (BIA) pending a review and *Carciari* Opinion from the DOI Solicitor's Office (SOL). Seven pending applications are for economic development, one application is for infrastructure, one application is for agriculture, and one application is for gaming. At this time, no additional information is required from the Tribe on the applications. With the exception of the gaming application, once SOL's *Carciari* legal opinions are issued, the BIA and Tribe will be able to determine whether the land into trust cases can be completed. The chart below provides the BIA's parcel tracking number and the date each application was submitted. At this time, the BIA cannot provide an estimated decision time. The BIA is working closely with SOL tracking the review.

Samish Pending Fee-to-Trust Discretionary Off-Reservation Applications

Sharepoint Property ID	Application Received Date	Acreage	Purpose	Application Complete (Yes/No)	Status	Estimate Time for BIA to make Decision
8026	02/19/16	1.02	Infrastructure (Admin Building)	No	Pending <i>Carciari</i> Opinion from Solicitor's Office (SOL)	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8027	07/13/16	11.40	Gaming (March's Point)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8028	07/13/16	3.65	Econ Dev (March's Point Non-Gaming)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion

Committee on Natural Resources
 Subcommittee on Indian, Insular and Alaska Native Affairs
 Legislative Hearing
 November 15, 2017

						is completed.
8029	05/26/16	39.40	Econ Dev (Campbell Lake North)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8030	07/15/16	44.35	Agriculture (Thomas Creek)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8031	03/18/16	0.52	Econ Dev (Longhouse)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8032	08/11/11	3.57	Econ Dev (Lopez Mudflats)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8033	03/18/16	6.70	Econ Dev (Campbell Lake South)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8034	09/03/12	60.71	Econ Dev (Fidalgo Bay)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.
8038	04/07/16	1.61	Econ Dev (Lopez Uplands)	No	Pending <i>Carciari</i> Opinion from SOL's Office	Estimated decision time cannot be determined at this juncture, until a SOL's <i>Carciari</i> opinion is completed.

**Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
Legislative Hearing
November 15, 2017**

- 2. If H.R. 2320 were to become law as introduced, what process, if any, would be undertaken by the Department of the Interior under National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation?**

Response: The courts have established that the environmental review requirements of NEPA are not applicable to agency actions that are mandated by Federal legislation. Nevertheless, the Department must understand any environmental hazards that might be present on lands it must acquire or any potential legal liabilities.

A legislatively mandated fee-to-trust acquisition is guided by Department Manual (DM) Part 602, Chapter 2, Sub-Chapter 2.2 (B) (1), which reads:

602 DM2

2.2 Scope.

B. The policy in this chapter does not apply to the following:

- (1) **Mandatory fee-to-trust acquisitions.** The Secretary has the authority and duty to acquire land to be held in trust by the United States on behalf of an Indian tribe or individual Indian under various mandatory acquisition statutes, judicial decrees, and legislative transfers involving unique circumstances applicable to the acquisition of such real property. The procedures by which mandatory fee-to-trust acquisitions satisfy the intent and objectives of this chapter shall be defined by regulation, policies, and guidance adopted by the Bureau of Indian Affairs.

Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
Legislative Hearing
November 15, 2017

3. Your testimony states that H.R. 2320 would "circumvent ongoing investigations regarding whether or not the Samish Indian Nation is entitled to have land taken into trust under *Carcieri v. Salazar* [555 U.S. 379]."

(a) What are the status of these investigations with regard to the Samish Indian Community and its pending fee to trust applications?

Response: The Samish Fee-to-Trust (FTT) applications are pending in the Office of the Solicitor for *Carcieri* opinions in order for the FTT applications to move forward. H.R. 2320 would assist in expediting the FTT applications because *Carcieri* determinations would not be necessary. The legislation requires compliance with the National Environmental Policy Act of 1969, which may be in conflict with 602 DM 2 which provides that mandated acquisitions are not subject to environmental requirements.

(b) To what degree has the issue of whether the Samish Indian Nation is entitled to have land taken into trust under *Carcieri* contributed to the Department not taking action on Samish's pending fee to trust applications?

Response: The delay in completing the land into trust cases is primarily due to the lack of a *Carcieri* determination. After the Office of the Solicitor's *Carcieri* legal opinions are issued, the BIA and tribe will be able to determine whether the land into trust cases can be completed.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 14 2018

The Honorable Lisa Murkowski
Chairman, Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the U.S. Geological Survey to the questions for the record submitted following the January 30, 2018, oversight hearing before your Committee on the role of the U.S. Geological Survey and the U.S. Forest Service in preparing for and responding to natural hazard events, as well as the current status of mapping and monitoring systems.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

Questions from Senator Ron Wyden

Question 1: Dr. Applegate, your written statement to the Committee emphasized the work USGS has done on *ShakeAlert*, the West Coast early warning system, “with new funding directed by Congress in recent years.” Your testimony also states that *ShakeAlert* will “provide an additional layer of safety” and a “significant boost in capabilities,” yet the administration’s budget slashes the program’s funding. I asked in our hearing what capabilities would suffer if that funding were cut, which is what Donald Trump is proposing. You replied that the Trump budget would focus on existing capabilities.

Please explain: 1) how USGS will be able to build and operate *ShakeAlert* if Congress cuts funding, and 2) what aspects of *ShakeAlert* USGS will scale back with less money.

Response: The President’s Fiscal Year 2018 budget did not request continued funding for *ShakeAlert* and would suspend USGS efforts to build *ShakeAlert*, including internal USGS implementation efforts, external funding to partners, and cooperative development with private and public sector users. The administration’s FY18 proposal preserves core USGS functions, including critical monitoring capabilities and heavily used public information products. The USGS has always worked with Congress to address concerns about our mission and budget priorities, and we maintain that commitment going forward, including working to determine the appropriate federal, state and local cost share associated with any future *ShakeAlert* developments.

Question from Senator Joe Manchin III

Question: Both the USGS and the Forest Service have certain areas of expertise and resources for certain types of natural disasters. For the Forest Service you have expertise in avalanche response, and the USGS takes the lead in monitoring, researching and forecasting earthquakes, volcanic eruptions, landslides, and even space weather. Fortunately we don’t have much volcanic activity in West Virginia, but we do experience natural disasters from time to time. When I was governor, I worked hard to keep in touch with county commissioners and folks on the ground to hear what concerns or problems they may be having, and to let them know we have two lines of communication open.

With that in mind, what process do you follow in alerting local authorities, local governments and other federal agencies to prepare for the possibility of natural disaster?

Response: The USGS develops methods and tools to assess natural hazards. We also maintain monitoring systems that are used to alert local authorities about impending hazards either directly in the case of certain geologic hazards or through the National Oceanic and Atmospheric Administration’s National Weather Service (NOAA NWS) in the case of floods and storm surge.

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

USGS and NOAA collaborate with local authorities to integrate this science into their own emergency response plans.

Questions from Senator Mazie Hirono

Question 1: The Hawaiian Volcano Observatory is the oldest of the five volcano observatories in the United States and monitors two of the highest priority volcanoes, Kilauea and Mauna Loa. Earlier this Congress I joined Chair Murkowski and Ranking Member Cantwell in introducing S. 346, the National Volcano Early Warning and Monitoring System Act.

Can you talk about the importance of updating and unifying the five volcano observatories across the nation and how provisions within this bill will help protect communities and save lives?

Response: The USGS operates five volcano observatories that each have their individual areas of responsibility but are managed under a single USGS Volcano Science Center and use a common alerting scheme. Each has its subject matter experts, and response plans developed in collaboration with local authorities. In these plans, roles and responsibilities during volcanic crises have been well defined.

Fully implementing a National Volcano Early Warning System (NVEWS) would promote further coordination of the observatories' work.

NVEWS as authorized by S. 346 would support many efforts already under development by the USGS including upgrading and augmentation of existing volcano monitoring networks, installing new networks on significantly under-monitored volcanoes, and modernizing networks opportunistically. Activities not yet initiated by the USGS that would be supported by this bill include the establishment of a 24-7 volcano watch office and a National Volcano Data Center, and creation of an external grants program for volcano research. The USGS agrees with the bill's objectives and we are actively pursuing opportunities to fulfill those objectives.

Question 2: USGS personnel at the Hawaiian Volcano Observatory are currently monitoring lava flowing from Kilauea Volcano and are also actively monitoring earthquake activity from Mauna Loa. Mauna Loa occupies over half of Hawaii Island and the last time it erupted threatened Hilo, the largest population center on Hawaii Island. Hawaii County (comprised of Hawaii Island) is the fastest growing county in the State and the potential for an eruption from Mauna Loa to threaten lives and property in Hawaii is very high.

With the population of Hawaii Island increasing, volcanic air pollution, or vog, has the potential to have significant health impacts, not to mention other impacts on agriculture and drinking water. I know that this month is the 9th annual "Volcano Awareness Month" on Hawaii Island, so there are ongoing educational programs being conducted to educate the public. However, can

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

you discuss specifically some of the efforts USGS is undergoing to educate and alert the public about vog? Is there a vog warning system, similar to weather alerts, in place that is easily accessible and understandable by the public?

Response: In Fiscal Years 2010 and 2011 the USGS funded development of a prototype vog forecast system, the Vog Measurement and Prediction Project (VMAP), through a cooperative agreement award of \$331,000 to the University of Hawaii at Manoa¹ (in addition to support from the NOAA Air Resources Laboratory). VMAP provides a visualization of volcanic air pollution for public awareness. It uses data from daily USGS volcanic gas measurements at Kīlauea Volcano and NOAA wind field data, among other data sources, to predict the concentration and dispersion pattern of vog 58 hours into the future. Then NOAA's National Weather Service, in coordination with USGS and NOAA's Volcanic Ash Advisory Centers (under NOAA's National Environmental Satellite Service), issue Ashfall Warnings/Advisories and other alerts to help keep people on the ground safe from volcanic air pollutants.

Question 3: Our forests in Hawaii are under continuous threat by invasive species, whether it be fast-growing invasive albizia trees that fall over during high wind events and damage our infrastructure, or Rapid Ohia Death that kills our native ohia trees and threatens our watersheds and ecosystems. Resources provided by USGS such as mapping albizia and the field test kits developed for Rapid Ohia Death detection are crucial to helping our state prepare and respond to these hazards.

In addition, researchers in Hawaii working on Rapid Ohia Death have successfully competed for Service First funds in the past, which is a partnership authority available to agencies within the Department of the Interior and the Department of Agriculture. I understand that the Department of the Interior is awaiting FY18 appropriations to be enacted before proceeding with the program, but I understand that researchers in Hawaii will once again be competing for these funds and I think it is important for our folks in Hawaii to have the resources necessary to continue this important work before our native ohia forests are decimated.

Outside of the potential for additional Service First resources, can you discuss any ongoing or future plans that USGS has in mapping or monitoring of albizia or Rapid Ohia Death in Hawaii?

Response: Scientists from USGS, universities, the U.S. Department of Agriculture, the Department of the Interior, and others comprise a Rapid Ohia Death (ROD) working group, which is coordinating research. The USGS Pacific Island Ecosystem Research Center is determining how the disease spreads, developing improvements to the field test kit, and conducting an analysis of environmental factors in disease-prone areas. Using this information, we hope to predict areas in which the disease is more likely to spread.

¹ mkwc.ifa.hawaii.edu/vmap/

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

USGS is not currently mapping or studying the factors that determine the spread of albizia.

Questions from Senator Catherine Cortez Masto

Question 1: I am aware of the important earthquake engineering research that takes place at the University of Nevada, Reno, Earthquake Engineering Laboratory, in partnership with some of our Department of Energy National Laboratories and the regional seismology studies of the Nevada Seismological Laboratory. Does the USGS develop partnerships and collaborations with others doing earthquake and geologic hazard work?

Response: The USGS partners with state geological surveys and university and private sector researchers in a variety of hazards monitoring and applied hazards research as well as with several universities in the operation of seismic monitoring networks. Among these, we provide competitive, peer-reviewed, external research support through grants and cooperative agreements that enlist the talents and expertise of the academic community, State government, and the private sector. For example, the USGS directly supports the Nevada Seismological Laboratory at the University of Nevada, Reno in a longstanding partnership for earthquake monitoring in Nevada and Eastern California. The Nevada Seismological Laboratory is funded by the USGS to operate the Nevada Seismic Network, which is a participating regional seismic network in the USGS Advanced National Seismic System. The USGS also provides support for the Western Great Basin Geodetic Network operated by the Nevada Geodetic Laboratory within the Nevada Bureau of Mines and Geology, also at the university.

The earthquake engineering research that is conducted at the University of Nevada Earthquake Engineering Laboratory is supported by the National Science Foundation (NSF), a partner of the USGS within the National Earthquake Hazards Reduction Program (NEHRP).

Lastly, USGS has a very close relationship with NOAA. USGS research, monitoring systems and expertise directly support NOAA's mission to warn people against a wide variety of geological-related hazards, specifically tsunamis, volcanic ash, lahars, landslides, mudslides and debris flows from wildfire burn scars.

Question 2: How does the USGS leverage the knowledge and capabilities at U.S. Universities and other research organizations and agencies?

Response: The USGS Earthquake Hazards Program provides grants and cooperative agreements to undertake targeted, applied research toward earthquake loss reduction, to operate regional seismic and geodetic networks, and in recent years, to develop the *ShakeAlert*

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

earthquake early warning system. Last year, the USGS awarded more than \$20 million in external grants and cooperative agreements for these purposes.

Question 3: There are tremendous technological advancements underway in terms of advanced sensors, the ability to remotely collect and distribute data, and high-performance computing. What is the USGS doing to take full advantage of emerging technology advancements that can improve and advance our ability to understand geologic hazards such as earthquakes?

Response: The USGS strives to leverage the latest technologies for earthquake loss reduction. For example, for earthquake monitoring, the USGS has pioneered the use of low-cost, internet-connected sensors, such as the *NetQuakes* device now in use nationally to supplement regional seismic network coverage. The USGS also uses crowd-sourcing for collecting information about earthquake damage, through the *DidYouFeelIt?* application, and both collects and distributes earthquake information using Twitter. USGS scientists, and scientists at the USGS-supported Southern California Earthquake Center, use high-performance computing to simulate ground shaking from scenario earthquakes. This work employs resources available through the National Science Foundation (NSF), the Department of Energy and other sources.

Question 4: How does the scientific knowledge of earthquake phenomenon and earthquake hazard generated by the USGS inform the engineering community and impact the ability to design and build infrastructure that is more earthquake resilient and ultimately saves lives?

Response: The USGS is a member of the four-agency National Earthquake Hazards Reduction Program (NEHRP) partnership within which the basic and applied research and assessments supported by the NSF and USGS, respectively, is handed off to National Institute of Standards and Technology and the Federal Emergency Management Agency (FEMA) to then be applied to improving earthquake resilience through construction standards and code requirements. Over \$1 trillion in new construction every year follows state and local building codes with seismic safety provisions derived from USGS seismic hazard assessments, and USGS seismic hazard data are critical inputs to siting and design of critical infrastructure from water utilities to nuclear power plants.

Question 5: While there are areas of potential earthquake hazard throughout the U.S., three highly seismically active states include Alaska, California and my home state of Nevada. What specific activities are being executed by the USGS that will help us better understand earthquake hazard and be better prepared for major earthquakes in these regions of very high seismicity?

Response: In seismically active states such as Nevada, the USGS:

- Provides 24x7 reporting on domestic and global earthquakes;
- Delivers earthquake impact and situational awareness products to emergency response officials;

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

- Develops and maintains seismic hazard maps, associated databases and tools;
- Reduces uncertainties in assessments of earthquake occurrence and ground motion;
- Assesses the risks from earthquakes to people, businesses and critical infrastructure;
- Communicates earthquake information to the public and to key stakeholders, including State emergency response agencies and disaster relief organizations.

These activities are partnered with state organizations, such as the Nevada Bureau of Mines and Geology and the University of Nevada, Reno.

Question 6: Natural hazardous events, like earthquakes, landslides, or wildfires can create a lot of damage to our infrastructure, and can have disastrous effects on people's lives and well-being. I am aware that the USGS has an office, the Office of Environmental Health that studies these events on their impacts on people's health in particular. Can you describe the factors USGS studies in how people's health is effected? Why is this important?

Response: Disasters can release into the environment large volumes of potentially hazardous materials such as raw sewage, crude oil, volcanic ash, and other contaminants from natural and artificial sources. They can also facilitate the spread of zoonotic diseases like the Zika virus or avian influenza.

The potential health hazards posed after disasters often receive considerable media attention and public concern, but their actual impacts may not always be adequately known.

Over the last two decades, the USGS has responded to many different disasters, including the World Trade Center collapse, to help understand the nature of contamination and the hazardous materials they produce.

Question 7: Can you describe the factors USGS studies in how people's health is effected? Why is this important?

Response: The USGS does not study human health impacts directly. Rather our experts in geology, geochemistry, analytical chemistry, hydrology, remote sensing, and biology work with experts in medicine and public health to help them understand the nature of environmental contaminants and pathogens to which humans are exposed.

Question 8 and 9: Does most of USGS' research in this regard typically take place following a disaster?

How could preparedness and response be improved if further study was made before a disaster occurs?

What factors, if any, prohibit USGS from performing pre-disaster research?

U.S. Senate Committee on Energy and Natural Resources
January 30, 2018 Hearing: The Role of the U.S. Geological Survey and the
U.S. Forest Service in Preparing for and Responding to Natural Hazard Events,
as well as the Current Status of Mapping and Monitoring Systems
Questions for the Record Submitted to Dr. David Applegate

What areas of study are currently lacking and where can Congress be helpful in that effort?

Response: As noted in our response to Question 6, the USGS has carried out numerous post-disaster responses but we also work with partners to help prepare for likely environmental contamination from future disasters. We work with these same partners to anticipate emerging contaminant hazards.

Question 10: Both USGS and U.S. Forest Service generate an immense amount of daily information – whether it’s in regards to seismic activity, volcanic activity, or anything else. How do you translate all of this science and measurements into an emergency management plan that the public can understand and policies that help protect people’s lives?

Response: For all hazards of all types, FEMA maintains the National Preparedness System, which defines an organized process for preparedness efforts, including planning at all levels of government.

Specifically for earthquakes, risk reduction is coordinated by the four agencies of NEHRP and their stakeholders through the development of seismic provisions in model building codes, public preparedness activities like the Great ShakeOut drill, and public awareness campaigns. Large-scale scenarios developed by USGS and partners form the basis for emergency response exercises and catastrophic event plans.

USGS streamflow data and flood-frequency statistics are essential to the quantification of the extent and frequency of flood hazards faced by communities across the Nation. In addition, NOAA uses USGS streamflow data, both real-time and historical to calibrate, verify, and initialize their forecast models used to generate river forecasts and warnings. Together with USGS elevation data and hydraulic models, flood frequency statistics permit the delineation of floodplain maps that are the operational basis of the FEMA National Flood Insurance Program (NFIP) and that are a key component of local zoning and building codes for more than 20,000 participating communities. Half of all NFIP Flood-Insurance Rate Maps are based on USGS streamflow data and flood statistics, most delivered through USGS StreamStats.