

TESTIMONY OF MARY L. KENDALL, DEPUTY INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON THE INTERIOR, ENERGY, AND ENVIRONMENT
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Mr. Chairman, and members of the Subcommittee, good afternoon. Thank you for the invitation to testify on behalf of the Office of Inspector General (OIG) for the Department of the Interior (DOI) today about the condition of Indian Country as it relates to the Department's responsibilities to American Indians.

As you know, DOI's mission includes fulfilling trust responsibilities or special commitments to American Indians. Fulfilling responsibility to American Indians is consistently a top management challenge for DOI. Through the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE), DOI provides services to 567 federally recognized tribes with a population of about 1.9 million American Indian and Alaska Natives, has trust responsibilities for 55 million surface acres and 57 million acres of subsurface mineral estates, and provides education services to about 42,000 Indian students in 183 schools and dormitories. DOI funds Indian Country programs that provide social services, law enforcement and detention services, tribal justice systems, housing assistance, repair and maintenance of roads and bridges, and economic development programs in some of the most isolated and economically depressed areas of the United States.

OIG findings have highlighted the same or similar issues for many years. Specifically, substantial work is needed to improve the Indian education system, particularly in creating environments where children are safe and have adequate means to thrive. In addition, tribal operations have longstanding deficiencies in records management and inadequate policies and procedures, which continue to hinder their accountability when handling public funds. BIA continues to struggle to develop and retain crucial personnel, which reduces the effectiveness of key programs. Issues persist within the BIA detention system as safety measures have continued to be ignored or overlooked. Overall failures in the management of various responsibilities entrusted to BIA compound these findings, making it difficult for BIA to achieve its mission goals.

Management of Contracts and Grants

DOI awarded more than \$2.1 billion in contracts, grants, and other financial assistance to Indian Country during FY 2016. Historically, single audits and OIG audits have identified severe deficiencies and material weaknesses in the capacity of tribes to effectively manage taxpayer funds. DOI-funded programs and operations in Indian Country are susceptible to fraud, waste, mismanagement, and abuse, due in part to the absence of spending oversight and insufficient procurement resources.

Tribes receive funding from a number of Government agencies in addition to BIA, such as DOI's Bureau of Reclamation, and the Departments of Health and Human Services,

Transportation, and Education. BIA regional and agency staff are responsible for oversight of these funds. Examples of inadequate oversight by BIA staff of tribal use of Government funds include inaccurate documentation filed by tribes to certify how they are spending funds and BIA's failure to review single audits submitted by tribes. BIA and BIE are also challenged by a limited number of warranted contracting officers and contracting officer's representatives, who are responsible for monitoring and overseeing contracts.

Land Buy-Back Program

Across Indian Country, more than 245,000 owners of 3 million fractionated interests, spanning about 150 Indian reservations, are eligible to participate in the Land Buy-Back Program. The program was created to implement the land consolidation component of the *Cobell v. Salazar* settlement, which provided \$1.9 billion to consolidate fractionated land interests across Indian Country within a 10-year period, which ends in November 2022.

Land fractionation is a serious problem throughout Indian Country. As lands are passed down through generations, they gain more owners. Many tracts now have hundreds and in some cases thousands of individual owners. It can be challenging to obtain the required approvals for leases or other uses of such lands. As a result, many highly fractionated tracts are unoccupied and unavailable for any beneficial purpose, which hinders tribal communities' process of self-determination and impedes DOI in fulfilling its trust responsibilities to American Indians.

To date, the Land Buy-Back Program has paid more than \$740 million to individual landowners and restored the equivalent of nearly 1.5 million acres of land to tribal governments. DOI has entered into agreements with 31 tribal nations to cooperatively implement the Land Buy-Back Program. DOI has identified 42 locations where land consolidation activities such as planning, outreach, mapping, mineral evaluations, appraisals, or acquisitions are expected to take place through the middle of 2017. These communities represent 83 percent of all outstanding fractional interests across Indian Country.

DOI faces several challenges in its effort to consolidate all land fractionation interests across Indian Country. Among these challenges are a dependence on coordination with other programs and agencies, and the sensitivity surrounding acquisition of Indian lands by the Federal Government. The breadth and scale of the task, limited funding, and the bounded lifespan established for the program are further major challenges to DOI's Land Buy-Back Program.

Indian Country Schools

In a May 2015 statement before the U.S. Senate Committee on Indian Affairs, BIE leadership acknowledged that their Bureau faces unique and urgent challenges in providing a high-quality education to Indian students attending BIE schools. They attributed these challenges to—

- difficulty in attracting effective teachers to BIE schools;
- difficulty in adopting research-based reforms at BIE schools;
- no access to certain programs that are designed, through funding opportunities, to build State educational agency and local educational agency capacity

- ongoing organizational and budgetary restructuring efforts; and
- inconsistent BIE leadership (the Bureau has had 33 directors since 1979).

A high-quality education is also hampered by crumbling school infrastructure and limited broadband Internet access. Some of the major facility deficiencies and health and safety concerns that we found includes:

- asbestos, radon, and mold;
- structural concerns and condemned buildings’
- electrical issues’
- grounds and drainage problems;
- damaged and deteriorated roofs’
- plumbing, corrosion, and moisture damage;
- reliance on temporary structures as permanent solutions; and
- problems with fire safety systems.

All of these challenges contribute to low graduation rates for Native students. Nationally, the American Indian/Alaskan Native high school graduation rate is 69 percent, below the national average of 81 percent.

Moreover, DOI is failing to collect comprehensive and accurate information on school safety and health conditions at all BIE schools, and failing to provide schools with support in addressing deficiencies identified in annual safety reports. Conducting thorough annual inspections at all BIE schools is essential for protecting the safety and health of students.

BIE’s planned restructuring, outlined in the 2014 “Blueprint for Reform,” recommended a shift in BIE’s role from direct provider of education into a capacity-builder and service-provider to tribes that run their own schools. According to the Blueprint, greater tribal control of schools promotes self-governance and self-determination, giving tribes more power to engage children, infuse schools with tribal cultural values and native languages, and improve educational outcomes. BIE’s goal is commendable, but the transition may require more technical and financial assistance for tribes than BIE can provide. Moreover, in order to make this transition successful and to ensure that funds are spent effectively, tribes need to have the capacity to run their own schools.

To address some of these complex challenges, DOI’s FY 2016 budget included \$45 million for school construction projects and funding for a public-private partnership to provide more than 1,000 American Indian students nationwide with improved access to digital technology in their classrooms and dorms. In addition, the FY 2017 budget request proposes \$1 billion to support a comprehensive redesign and reform of BIE, including \$138 million to improve facility conditions and \$25 million to extend broadband Internet and computer access at BIE-funded schools and dormitories.

To effectively use its Federal funding in addressing these challenges, BIE needs to improve its oversight of school expenditures. In a 2014 report, the Government Accountability Office (GAO) stated that BIE continues to be challenged with the development of process documents

that detail how BIE oversees expenditures for major programs. BIE also needs to develop procedures that detail the requirements for consistent documentation of monitoring activities and remediation actions to resolve financial weaknesses identified at schools.

Energy Development and Management on Tribal Lands

Indian Country energy resources are underdeveloped relative to surrounding non-Indian resources, but have significant potential. BIA has primary authority for managing Indian energy development and generally holds final decision-making authority for leases and other permits required for development. Indian-owned oil and gas resources are one of the largest revenue generators in Indian Country, with royalty income of \$826 million in 2015.

In 2015, GAO identified BIA “management shortcomings” as a major hindrance to energy development in Indian Country. Management shortcomings, coupled with a complex regulatory framework, limited capital and infrastructure, and varied tribal capacity to address issues, can lead to lost revenue for American Indians. GAO recommended that DOI take steps to address data limitations, track its review process, and provide clarifying guidance, among other actions to improve energy development and management on tribal lands. In 2016, GAO pointed out that BIA is also faced with an extensive backlog, in part due to inadequate staffing and a complicated review and approval process for Indian oil and gas revenue-sharing agreements, known as communitization agreements. In July and August 2015, DOI issued guidance intended to streamline the review process and reduce the approval times administered by BLM and BIA. GAO expressed concern that the guidance did not provide sufficient approval timeframes, systematic methods to track the Federal review process on these agreements, or a robust plan to evaluate the effects of such guidance on timely review.

Among the tools available for promoting energy and resource development in Indian Country are tribal energy resource agreements (TERAs), which aim to promote tribal oversight and management of energy and mineral resource development on tribal lands and to further the goal of self-determination. Federal policy allows for interested tribes to pursue TERAs, which would enable tribes to develop energy-related business agreements, award leases, and grant rights-of-way for energy facilities without having to obtain further approval from the Secretary of the Interior. Although TERAs create an avenue for tribal-directed energy and resource development, according to GAO testimony before the Senate Committee on Indian Affairs in 2015 and an OIG report issued a year later, no tribe has entered into a TERA. This is due in part to the complexity of TERA regulations; thus TERA has not proved a viable option for tribes.

BIA is attempting to improve energy management shortcomings, as GAO recommended, by developing processes to track review and response times for energy-related documents and collect relevant data. BIA has set a goal to implement a tracking and monitoring mechanism for oil and gas leases by the end of FY 2017. Ensuring efficiency, effectiveness, and transparency in the handling of energy-related documents should improve BIA’s ability to appropriately develop Indian energy resources.

In FY 2016, DOI received initial funding to establish an Indian Energy Service Center, to expedite the leasing, permitting, and reporting for conventional and renewable energy. By

instituting streamlined processes, standardized procedures, and best practices for all types of energy transactions, the center intends to remediate backlogs and provide expedient energy-related services and support to tribes nationwide. The creation of this center can also improve cross-bureau communication among the BIA regional offices, the BLM field and State offices, and the Office of the Special Trustee for American Indians' fiduciary trust officers and regional trust administrators. Once this center is operational, DOI will need to conduct regularly scheduled assessments to ensure it is efficiently and effectively mitigating the issues it was designed to address.

Thank you for the opportunity to testify today. I would be happy to answer any questions that members of this Subcommittee may have.