

From: Stacy Leeds <leeds@me.com>
Sent: Tuesday, April 30, 2013 8:23 AM
To: Sarah Palmer
Subject: Fwd: Follow-Up
Attachments: FY 2012 Budget Briefing Paper - Real Estate Projects (March 10).docx
Follow Up Flag: Follow up
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Begin forwarded message:

From: "Webb, Stan" <Stan.Webb@bia.gov>
Subject: Follow-Up
Date: February 26, 2013 4:00:11 PM CST
To: "leeds@me.com" <leeds@me.com>

Stacy - Attached is some background information on the FY 2012 reduction targeted at Real Estate Services program funds (totaling about \$10 million) that I referenced in my message yesterday. The "non-recurring" funds that were zeroed out in FY 2012 supported the type of community and economic development work that I mentioned (primarily the negotiation and documentation of leases and easements), as well as all real-estate-related rights protection and litigation support work (where tens of thousands of roads, utilities, and canals remain undocumented). I assume that the Trust Commission will want to look at funding and staffing issues relating to all trust programs, to ensure that adequate resources are available at both the agency/tribal and regional levels. In that regard, the Real Estate Services program was also impacted more than any other by the "trust reform" effort of some ten years ago, with support programs and program components being centralized or relocated to OST, with significant funding and staffing implications. While BIA is beginning to unwind much of the administrative side of that reorganization, we have been told that any changes in the structure of the trust organization would have to await the recommendations of the Trust Commission.

Again, thanks for the opportunity to weigh in and let me know if/how you would like to follow up.

-----Original Message-----

From: Webb, Stan
Sent: Monday, February 25, 2013 3:07 PM
To: 'leeds@me.com'
Subject: FW: Touching base

Stacy - Thanks for getting in touch. I would be glad to discuss or provide you with some information specific to land management; when I got your message, I printed the materials from your February meeting and found the emphasis to be on resource management, land titles and trust funds, with little in the record on the BIA's transactional role in community and economic development (especially as it relates to allotted lands). I have lots of materials that need to be updated, but would be glad to share them (without attribution) if you wish. In the meantime, I've attached a one-page summary description of the program I manage; since that summary was prepared, we have suffered a program-specific 30% budget reduction in FY 2012, with another

8% reduction in FY 2013 even prior to the across-the-board effects of the forthcoming sequestration. I am hoping the Trust Commission can make recommendations to reverse these decisions and trends, but time is of the essence.

Let me know if/how you would like to follow up, and thanks again for the opportunity to provide an institutional perspective.

-----Original Message-----

From: Stacy Leeds [mailto:leeds@me.com]

Sent: Monday, February 25, 2013 12:35 PM

To: Webb, Stan

Subject: Touching base

Stan,

Did not forget you, just been a little-over extended.

I would like to hear your thoughts on the commission and what your recommendations would be.

Nice to meet you.

Stacy

Stacy L. Leeds

Dean and Professor

University of Arkansas School of Law

leeds@uark.edu

Sent from my iPad

Western Regional Office - Branch of Real Estate Services

Program Profile

WRO Realty administers more than 11 million acres in six states (primarily AZ, UT, and NV); less than 300,000 acres are allotted but many allotments are small (e.g., 10 acres), high-value (up to \$200,000/acre FMV), highly fractionated, and/or located outside tribal jurisdiction (i.e., public domain allotments). The staff of twelve includes a licensed attorney, certified appraiser, and registered land surveyor, along with a professional paralegal, historian, and land use planner. The staff has more than 150 years of aggregate experience in BIA (at all levels of the organization), in addition to substantial specialized experience with OHA, SOL, NARF, USFS, BLM, OAS, the Gila River Indian Community, the Inter-Tribal Council of Arizona, and the then-top-rated commercial law firm in Arizona. Among the region-specific issues which span generations are those involving the location and management of the reservation boundaries bordering the Colorado River, the management of lands and resources in Utah on behalf of terminated mixed-blood Utes and restored Paiutes, and the various Hopi/Navajo joint use/management and settlement issues.

Acquisitions and Dispositions

WRO Realty reviews and approves all off-reservation fee-to-trust proposals (excluding only those involving lands within the exterior boundaries of a reservation, which may be approved at the Agency level). WRO Realty processes a relatively low number of applications, but has accounted for the greatest number of acres being placed in trust status among all Regions in recent years (largely through the implementation of land and water claims settlement legislation and public land transfers, including transfers of excess/surplus property). WRO Realty has also taken a lead role in the development of national policies and implementation instructions involving conveyances of allotted lands, and has served as a longtime consultant to the Indian Land Consolidation Program.

Economic and Community Development

WRO Realty reviews all long-term commercial lease and easement proposals involving allotted lands, and assists in the review of such proposals involving tribal land. In so doing, WRO Realty is often directly involved in the negotiation of economic terms and other requirements/restrictions, as needed to protect the interests of the Indian landowner throughout the extended terms of those agreements. WRO Realty establishes region-wide policies designed to facilitate the development of Indian housing and the delivery of essential services to tribal members through road and utility easements, and has also taken the lead in establishing review criteria for solar energy leases and in facilitating “tribal charter” leases and an “empowerment model” which will allow individual Indian owners to directly share in project revenues as joint venture partners, consistent with the Obama Administration’s larger policy objectives. Over a recent five-year period, WRO Realty documented more than \$100 million in “added value” projected/obtained for Indian landowners as a direct result of its negotiation of lease terms and settlement agreements on their behalf.

Resource Management and Trust Reform

WRO Realty establishes forms and policies to assist the agencies in the processing of agricultural and mineral leases and other agreements relating to the development of natural resources. WRO Realty also plays a direct role in the oversight of accounting for the rents, royalties and other income derived from such leases and agreements, and in the protection and reclamation of the resources through the requirement of financial assurances or collection and enforcement actions. WRO Realty also assists tribes seeking to assert greater control over the management of such resources under broad authorities delegated by Congress.

Rights Protection and Litigation Support

WRO Realty conducts exhaustive research of all boundary issues and trespass allegations, with the invaluable assistance of a BLM Surveyor stationed at WRO. Requests for curative actions, legislative settlements/remedies, and offensive litigation are initiated as appropriate, with comprehensive documentary/cartographic evidence being compiled in each case. Rights protection activities include outreach services to tribes and joint activities with BOR, BLM, and other federal agencies, and WRO Realty has also had a lead role in the development of general and specific settlement strategies in the ongoing tribal accounting claims litigation. WRO Realty also takes the lead in all enforcement actions involving lease disputes, participating directly in settlement negotiations, reviewing agency decisions on appeal, and recommending offensive litigation as needed to recover possession, unpaid rents, or other damages.

BUREAU: Bureau of Indian Affairs
MEMBER: Western Regional Office
ISSUE: Real Estate Projects (Lease Compliance, Unresolved Rights, Cadastral Survey)

Key Points:

- The President's FY 2012 Budget eliminates funding (within the Real Estate Projects line item) for Lease Compliance and Unresolved Rights (an aggregate reduction of approximately \$4 million), while also reducing the funding available for Cadastral Surveys on the ground to less than \$1 million (from previous levels approaching \$6 million).
- It was long ago recognized that the Lease Compliance and Unresolved Rights line items supported "program" as opposed to "project" work, but the funds were misidentified as "Project" funds during the last Administration, even as the Department was proposing (but did not see enacted) a significant increase in the line item as part of the last Administration's "Healthy Lands Initiative."
- OIG's public-lands-based recommendations to fund cadastral surveys from revenues cannot be relied on to eliminate Cadastral Survey funding for Indian reservations, as funded through the BIA budget (where this program was historically funded, until it was moved to the OST Budget as part of the Trust Reform initiative and subsequently returned to BIA without the funding some 5 years ago). In some instances, tribes will fund cadastral surveys, as needed to meet time lines or priorities that cannot be accommodated within program standards, but the statutory funding responsibility remains with DOI.

Background:

- The Lease Compliance and Unresolved Rights programs were established in the 1980's to support research, negotiation, and pre-litigation activities which were generally thought to be unfunded or underfunded by Real Estate Services base funding appropriations (particularly at the Regional Offices); these deficiencies were identified during the "2415" claims process, and are now being revisited in the context of the tribal accounting claims.
- It was originally envisioned that these funds would be transferred to the Realty base, and a substantial portion of the Lease Compliance program funding was, in fact, transferred to the Palm Springs Field Office base in the late 1980's. Further base transfers did not occur, but over the years permanent staff positions were established in reliance on these funds.
- Minerals and Mining Projects and Environmental Quality Projects would not be significantly reduced in the proposed FY 2012 budget, notwithstanding the fact that those line items received significant increases in the past two years (much of it at the expense of Real Estate Services), and the fact that those funds – unlike those being proposed for reduction – are not designated for core trust functions. WRO is currently processing three utility-scale solar energy leases, and five other tribes are in negotiations, but none of the BIA's "New Energy Frontier" funds have reached Real Estate Services.
- The positive return (for Indian landowners) on Lease Compliance, Unresolved Rights, and Cadastral Survey funds is self-evident and well-documented. Significantly, it is these funds which are relied on to support virtually all of the work being done in support of the Indian Trust Litigation Office's efforts to resolve the 100 or so tribal accounting claims that remain pending.

Current Status:

- If these funds can be restored, \$370,000 (the amount of the proposed reductions in Lease Compliance and Unresolved Rights) should be moved to the WRO Regional Office Operations (Real Estate Services) line item, to avoid further confusion as to the true nature of these program funds.

Prepared by: Stan Webb, WRO Realty Officer
Date: March 10, 2011

Phone: 602-379-6781, Ext. 1232