

**TESTIMONY OF CHAIRMAN ROBERT MIGUEL
ON BEHALF OF THE AK-CHIN INDIAN COMMUNITY**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES
APPROPRIATIONS SUBCOMMITTEE ON
INTERIOR, ENVIRONMENT AND RELATED AGENCIES**

March 18, 2016
Rayburn House Office Building B-308

Mr. Chairman, Madam Ranking Member, and Members of the Subcommittee.

My name is Robert Miguel and I have the honor of serving as the Chairman of the Ak-Chin Indian Community (“Community” or “Ak-Chin”).

Historically, our tribe has always been a farming Community. The name Ak-Chin is an O’odham word that means “people of the wash,” for the irrigation our ancestors used to grow beans, corn and squash. Today, we own and operate Ak-Chin Farms, which employs about 85 people and cultivates more than 16,000 acres of farmland. With the rapid growth of the surrounding community, our gaming and hospitality industries have also grown into major sources of economic development for the surrounding communities.

Our Reservation directly borders the City of Maricopa, Arizona, both of which are approximately 35 miles south of downtown Phoenix, Arizona. In recent years, we have seen a great increase of tribal members returning to the Reservation from around the country and currently close to 80% of our enrolled members live on the Reservation. However, we still remain a small tribe with 1,033 enrolled members and our recent growth pales in comparison to the rampant growth of our neighbor, the City of Maricopa, Arizona. The City’s growth has been overwhelming. It has gone from a population of 1,040 people in the 2000 Census, to approximately 47,442 in 2014. The rapid growth has forced the Community to adapt, as well as plan for continued long term growth in the corridor that connects Phoenix and Tucson, Arizona.

As the city surrounding us continues to grow at one of the fastest rates in the nation, we are committed to being good neighbors while also working hard to build a stronger future for the next generation of Ak-Chin tribal members. As our previous Chairman testified last year before this Subcommittee, and our message remains the same today, to evolve and meet these challenges, we need a Bureau of Indian Affairs (“BIA”) that is flexible and willing to break free from the institutional and bureaucratic practices of a bygone era. We hope Congress will continue to push and prod the BIA into focusing on the realities facing tribes in 2016 and beyond.

Ak-Chin Multi-Purpose Justice Complex

The most tangible example of our work to protect the future of our Community is the recently completed \$18 million Ak-Chin Multi-Purpose Justice Complex (“Justice Complex”). The Community completely funded the construction of the \$18 million Justice Complex which was

dedicated on June 6, 2014, without any cost to the federal government. To the best of our knowledge, it is the first tribal justice center that was fully funded by a tribe.

The Ak-Chin Justice Complex is a truly state-of-the-art 56,000 square-foot complex. In the beginning of the planning phase for the project, the Community established a planning committee comprised of our police chief, chief judge, detention sergeant, capital projects manager and our contract and grants manager. They worked tirelessly to study and research other tribal justice facilities across the country to learn best practices from other tribes who had been able to benefit from federal appropriations for facilities construction.

By conducting this research, we came to the conclusion that there were great benefits and efficiencies to housing all aspects of the judicial system under one roof. Accordingly, our Justice Complex houses the Community's police department, public defender's office, prosecutor's office, detention and probation center and courts in one building. It uses state-of-the-art water and energy saving technologies throughout and was designed to ensure detainees could practice their religious beliefs, take GED or college courses online, and receiving CPR or food handling certifications.

From the beginning of the construction process, we worked extensively with the BIA to ensure the Justice Center met all BIA construction requirements necessary to qualify for federal Operations and Maintenance Funding ("O&M Funding") and the facility did receive its Permanent Certificate of Occupancy on September 24, 2014.¹ All of this work to obtain the Certificate of Occupancy, which took place over several years, was done in lockstep with the BIA with the understanding that it was the necessary step Ak-Chin needed to take to be eligible for O&M Funding. However, upon completion, the BIA denied our requests for the O&M Funding the tribe would otherwise been eligible for had we waited on the BIA to fund the construction process. It remains unclear if the facility will ever be eligible to receive O&M funding in the future.

The Community's decision to construct the Justice Complex is an example of our inherent right to exercise tribal sovereignty through self-governance and we hope it will serve as a model for other Indian communities well into the future. We hope to ensure that other tribes choosing to exercise their sovereignty in a similar matter in the future do not face the same bureaucratic roadblocks to receiving O&M Funding. Accordingly, we ask the Subcommittee to include Bill language that would require the BIA to work in consultation with tribal governments to develop a framework and policy that does not penalize tribes who decide to exercise their sovereignty by taking on cost of projects that should otherwise be a federal trust responsibility. While we still have much work to do with the BIA on this issue, we will continue to emphasize the importance of eligibility for O&M Funding to Ak-Chin and, likely to many other tribes taking on similar projects in the future.

Tribal Self-Funding of Federal Trust Responsibilities

¹ Prior to receipt of the Permanent Certificate of Occupancy, the facility was also operating in compliance with all BIA regulations under a Temporary Certificate of Occupancy.

Ak-Chin made the decision to fund the construction of our own facility based on the lack of federal appropriations for tribal facilities construction and the backlog of justice construction needs that already exist in Indian Country. Tribal government facilities and infrastructure continue to age and deteriorate far faster than the funds being appropriated for facilities construction, so we expect many tribes will also decide to self-fund major government construction projects in the future. This will apply far beyond justice related projects, but also to schools, roads, sewage plants, hospitals, and other infrastructure projects as tribes continue to exercise greater degrees of self-governance. Indeed, the Community has also self-funded our Central Plant, Waste Water Treatment Plant, Surface Water Treatment Plant, as well as roads and infrastructure projects.

It seems to us the federal government would want to encourage the tribes with the resources to do so to invest in their communities and take on projects that would otherwise linger too long waiting for the standard appropriations cycle. Indeed, our experience working with the BIA on the process for obtaining our Certificate of Occupancy was productive and relatively straightforward as we bore all of the costs of constructing the facility to BIA requirements. However, our experience working with the BIA following the completion of the project when we began to seek eligibility for O&M Funding has become a maze for the Community to navigate back and forth between local, regional and national BIA officials.

I am certainly not the first tribal leader to highlight the challenges of working with the BIA to this Subcommittee, and there are clearly some systemic issues I know this Subcommittee continues to work to address. However, in our case, we have consistently received assurances from certain BIA officials about the path we need to take and then after investing time and money following one Office's guidance, we have received a rejection of that approach entirely from another BIA official. Indeed, there seems to be little, if any, coordination or consistency in the information we receive from one BIA office to another. Clearly, our process remains ongoing and we appreciate the assistance of the many dedicated employees throughout the BIA, but considerable time and energy could be saved if we were able to rely on the assurances our trustees at the BIA have made to us throughout this process.

We know this experience is not unique and just as we hope that our Justice Complex will serve as an example for other tribes, we also hope our experience navigating the bureaucratic process with the BIA can help improve that process for other tribes who face the same situation in the future. Indeed, more and more tribes are becoming both capable and willing to exercise self-determination through significant construction investments in our own communities. This should be recognized and encouraged through a policy that encourages tribes to build facilities that meet BIA construction codes by ensuring O&M Funding will ultimately become available.

If tribes ultimately cannot receive O&M Funding after the expense and years of work put into building a completely OFMC health and safety code compliant Justice Complex, there would be little incentive to follow these regulations in the future. Tribal innovation needs to be embraced and encouraged by our federal partners, especially the BIA. We will continue our work to obtain O&M Funding for the Ak-Chin Justice Complex and we look forward to working with our delegation and the BIA to ensure the Community's eligibility. Furthermore, we hope Congress

will continue to work with the BIA to build a bureaucracy that is more flexible and responsive to the ever changing needs and capabilities of tribal governments.

Tribal Self-Governance

In our continued work to secure O&M Funding for the Justice Complex, the BIA has cited nothing in federal law or Department of Interior Regulations that would restrict its ability to provide funding to a tribe that funded its own construction project. The Operations and Maintenance Program is explained in Part 80, Chapter 3 of the Indian. However, a recent and unfortunate Ninth Circuit opinion found that the Indian Self-Determination Act (“ISDA”) only requires the BIA to enter a PL 93-638 Contract with tribes who are already receiving existing funding.

That case, *Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, limits tribes’ options when they receive an outright denial for a newly requested self-governance contract. While it is clear that the BIA believes that the opinion in *Los Coyotes* gives it the power to deny every single application a tribe makes for new funding, we feel that such action is contrary to the intent of ISDA and the United States’ strong policy statements promoting self-governance.

We recognize that the BIA, like any tribal government, is forced to operate under a Budget that is outside its control. However, budgets are first and foremost about priorities and we ask this Subcommittee to work with tribes and the BIA to ensure the BIA has a process in place to work with tribes who make the decision to construct their own government facilities.

Self-governance enables tribes, not the BIA, to run our own programs and ensure that these programs conform to our history and traditions to best serve our people. By running our own programs, we are also building the capacity of our people to effectively operate programs and our government far into the future. Indeed, self-governance benefits our community well beyond the people served by our programs.

Conclusion

In conclusion, Mr. Chairman, Madam Ranking Member, and Members of the Subcommittee, I would like to thank you for holding this hearing to directly listen to the most pressing needs of tribes across the Country. It is an honor to represent my Community in Washington, DC and to continue the government-to-government relationship that was built by generations of tribal leaders that came before me. We have high hopes that this Committee will continue its good work to address the challenges tribes face from population growth, bureaucratic hurdles and in exercising the opportunities and promises of expanded tribal self-governance.

There has been great progress made from working together over many years, but as tribes and the country continue to change and evolve we will have much more work to do and we hope Congress can help push the BIA to be more flexible and responsive to growth and how tribes are forced to work within the environment that continues to change around us. We look forward to working with you all to create a future in Indian Country that we can all be proud of for the generations that will follow us.