

Stockbridge-Munsee President Shannon Holsey Testimony

Good day Chair McCollum, Ranking Member Joyce and Members of the Subcommittee. My name is Shannon Holsey and I am the President of the Stockbridge-Munsee Community. It is my pleasure to be here today to present testimony on behalf of our people about the need for mandatory appropriations for the Bureau of Indian Affairs and the critically important process for taking fee land into trust status.

Most Tribal Governments provide services to their membership largely through a combination of federal funding and tribal gaming dollars. For the Stockbridge-Munsee Community 86% of our tribal government budget comes from gaming dollars. This funding source has allowed for the expansion of services to tribal members. Everything from health care, police departments and emergency responders to funding for membership education and training.

However, in Wisconsin tribal gaming has stagnated as the market has become saturated. Almost every citizen in the State of Wisconsin is within a one-hour drive time of a tribal casino. This blanketing of the market has resulted in tribal net win flat lining at 1.1 to 1.2 billion dollars from 2007 to 2018. This flat lined revenue drives competition between the tribal gaming venues as the needs of each tribe's membership must still be met and is ever increasing. The end result of this saturation and competition is increasing overhead with declining profits as each facility competes for customers.

That is why time is of the essence for stabilized funding from the federal government that will allow tribal governments to invest in a diversified economy. Being able to plan years in advance due to a stable federal government funding level of its trust responsibility to tribes, allows tribes to engage in long term planning and financing that is crucial to successful diversified economic development projects.

The 2019 government shutdown—the longest in United States history—is only the most recent example of the federal budget process jeopardizing the health, safety, and wellbeing of tribal citizens.

Tribal nations must regularly overcome uncertainty when planning and providing services to their citizens because of political impasses related to federal spending.

For instance, since FY 1998, there has only been one year (FY 2006) in which the Interior, Environment, and Related Agencies Appropriations bill has been enacted before the beginning of the new fiscal year.

The often-partisan debates affecting the appropriations process have an outsized impact on the daily lives of AI/AN people who already face underfunding of healthcare, education, and backlogs in physical infrastructure—all of which fall under the federal trust responsibility.

Congress must prevent political impasses from jeopardizing the provision of adequate, quality services in tribal communities – such as healthcare, law enforcement, and child welfare – by passing legislation authorizing advance appropriations for the Indian Health Service and Bureau of Indian Affairs.

Current Legislation:

Indian Programs Advance Appropriations Act – S. 229 & H.R. 1128: The Indian Programs Advance Appropriations Act would provide advance appropriations authority for the Indian Health Service and certain programs at the Bureau of Indian Affairs. The principal sponsors are Senator Tom Udall (D-NM) and Representative Betty McCollum (D-MN). The Senate bill has 13 Democratic co-sponsors, while the House bill has 41 bi-partisan co-sponsors.

Indian Health Service Advance Appropriations Act of 2019 – H.R. 1135 & S. 2541: Representative Don Young (R-AK) introduced the Indian Health Service Advance Appropriations Act of 2019. H.R. 1135 would provide advance appropriations for Indian Health Services and Indian Health Facilities accounts. The bill has 28 bipartisan cosponsors. Last week, Senator Murkowski (R-AK) introduced a Senate companion bill. The bill has 14 bipartisan cosponsors.

The best way Congress and specifically this committee can assist in driving diversified economic development in Indian Country is by leading a funding mechanism shift to a mandatory appropriations model. The Members of this Subcommittee have done an extraordinary job for many years in finding ways to provide more funding for tribal needs, often exceeding Administration budget request. This is very much appreciated and it is clear that you recognize that spending to meet tribal needs is a trust obligation of the United States. Unfortunately, the pressures on the federal discretionary budget are great, are increasing, and will continue to impact your ability to provide necessary funding.

What ultimately is needed is for these funding obligations to be made mandatory spending, freeing them from the uncertainties of the yearly appropriations process, sequesters, government shutdowns, and competition with other priorities. This would give tribal leaders certainty that the needs of their people would be met, and in return, we would provide the highest levels of transparency to ensure that all funding was spent appropriately. I know that many of the Members of this Subcommittee have advocated for this change, and tribal leaders are ready to assist in any way we can to achieve this goal.

To illustrate this need for adequate mandatory appropriations, my testimony is going to focus on the fee-to-trust land process. This is an especially critical issue for my Tribe. After our removal from the East coast to Wisconsin, we received a reservation that was later diminished and disestablished by federal action. A smaller reservation was reestablished for my Tribe under the Indian Reorganization Act of 1934, but the reservation is on what the federal statutes characterize as sub marginal land (25 U.S.C. §5503). This has meant that my Tribe needs to use the federal fee-to-trust land process to regain a land base that can sustain the Tribe.

As you know, the federal government has an obligation to process tribal applications to have land taken into trust under federal law (25 U.S.C. §5108; federal regulations at 25 CFR part 151). Federal regulations currently outline separate processes for on-reservation and off-reservation applications, as well as an administrative appeal process that can add at least 2 levels of administrative appeals. These regulations outline a list of factors that federal officials need to

consider when making these decisions and include an opportunity for local governments to comment on applications.

I feel that appropriations supporting the fee-to-trust process must be mandatory. The federal government has trust and treaty responsibilities to tribes in relation to having and holding tribal lands. This core responsibility requires sustained funding in order to ensure that applications continue to be processed and can be processed in a timely manner. As fee-to-trust decisions require a complicated multi-factor analysis, sustained attention is needed for the issuance of a clear and supported decision.

In the best of circumstances, the fee-to-trust land application process presently takes 1-2 years. However, if a state or local government opposes a fee-to-trust decision taking the land into trust, then an additional 7-8 years can be added to this timeframe for administrative appeals. If decisions are appealed to federal court, then they take even longer.

For example, in 2017, my Tribe had land under 2 applications complete the fee-to-trust process. These acquisitions were the result of the IBIA upholding the fee-to-trust acquisitions. One application took 9.5 years. The other application took 8.5 years. Prior to those applications, the Tribe had not had land taken into trust since 2011 and that application took 11 years to process. No land has gone into trust since the 2017 decisions. All of these applications did involve administrative appeals due to standing opposition from local governments.

At present, my Tribe has 11 fee-to-trust applications pending. There are 5 applications awaiting decision by the Interior Board of Indian Appeals. Two of these applications have been part of the fee-to-trust process for about 8 years while the other 3 applications have been in process for about 3 years. We have another 6 applications that are before our local Great Lakes Agency of the Bureau of Indian Affairs. Of these 6 applications, 2 were submitted in 2019, 1 was submitted in 2017, and 3 were remanded for a 2nd time by the BIA's Midwest Regional Office in 2019. The remanded applications have been pending since 2012 and 2013.

I share this background information to show how this complex, multi-year process needs consistent appropriations to ensure the staff time and attention necessary for the federal government to fulfill its obligations. We need adequate funding and the staffing of trained federal employees at all levels of the fee-to-trust process to keep it moving smoothly and quickly. For example, we suspect the processing of fee-to-trust applications will slow in the BIA's Great Lakes Agency due to staffing issues. They previously had 2 employees working on the applications and those positions are now vacant.

Additionally, instead of amending fee-to-trust regulations to place more obstacles to trust acquisitions, we feel that the process should be streamlined, and appeals processed more quickly. For example, why is one tribe required to submit its applications to an agency office while another is allowed to submit its applications to the regional office? The tribes who submit applications directly to the regional office are able to cut out one level of administrative appeals, which can take years off the application process.

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These delays in the fee-to-trust process have real consequences for the Tribe and its members. Tribal members who live and work on the reservation are not required to pay state income taxes. However, until the land is taken into trust, these same tribal members are being taxed. Similarly, the Tribe has to pay property taxes while the land is in the trust process. The Tribe may already be providing local services like policing, fire protection, social services, and road maintenance in relation to the land, but it still has to pay property taxes as well. Delays also increase the time period when there is more potential for jurisdictional conflicts. For example, my Tribe does have state-recognized police department (Wisconsin is a Pub.L. 83-280 state, which means the state has concurrent criminal jurisdiction). However, its jurisdictional territory is reservation and trust land. While we do have a good relationship with the county sheriff and are able to have our officers are cross-deputized, this could change and limit the ability of tribal officers to respond and assist tribal members who live on land that is not yet in trust.

The impacts of policy changes are only exacerbated by the uncertainty inherent in the current funding process. While I acknowledge there will always be issues to work on with our federal partners, the trust relationship dictates that stable funding for tribal programs should not be one of them.

Switching to a mandatory appropriations funding model will allow tribes to conduct long range planning and secure the financing necessary to continue to diversify tribal economies beyond gaming thereby providing my tribal members stabilized government service levels critical to their wellbeing.

This funding model will also provide certainty for the federal government and hopefully change the narrative in Washington from cost savings and reducing government to a discuss of providing the best services and support for tribal governments that allow economic growth on the reservations across the nation. This largely rural economic development will continue to drive the nation's economy forward.

Indian Country needs to continue building support for legislation that will provide advance appropriations for tribal programs.

Urge Congress to pass legislation to ensure that tribal nations and their citizens are not impacted by government shutdowns or short-term CRs.