

Questions for the Record
U.S. House Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States
Oversight Hearing on “Examining Federal Facilities in Indian Country”
June 17, 2021

Questions from Chair Leger Fernández

Question 1. How did BIE’s deferred maintenance backlog affect the agency’s ability to adequately respond to the Coronavirus pandemic and create safe learning environments for its students?

Response: As most schools operated using distance learning supports, the maintenance backlog was not a major factor during the initial year of the pandemic. In addition to general school campus upgrades, BIE is working directly with its Indian Affairs partners to prioritize projects and address the deferred maintenance backlog as school sites plan to reopen for the 2021-2022 School Year. Projects include those to address ventilation issues and heating, ventilation, and air conditioning (HVAC) circulation upgrades to create safe learning environments and ensure BIE schools are following the latest Centers for Disease Control and Prevention (CDC) guidelines. BIE field staff are working with their respective school leaders throughout the summer to provide technical assistance to support site reopening, which includes addressing local maintenance needs to the extent possible.

Questions from Rep. Grijalva

Question 1. How does the President’s budget address facilities needs for tribal courts?

Response: The budget includes \$43.2 million for tribal courts; this includes a \$5 million increase for Operation and Maintenance (O&M) funding for tribal court facilities.

Question 2. The DOI Office of Inspector General conducted a report on BIA’s detention facilities in 2003, and updated in 2016. A key finding was BIA’s inability to adequately maintain complete and accurate information regarding the detention facilities, which contributed to a likely underestimate of BIA’s maintenance backlog needs.

a. Are you able to share with us a current update on BIA’s data collection practices regarding the maintenance and construction needs of BIA detention centers?

Response: Indian Affairs organizations are coordinating on actions to improve information regarding detention center maintenance backlog needs. The Indian Affairs Division of Facilities Management and Construction (DFMC) and the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) meet regularly to determine facility repair needs at Detention Centers. OJS meets regularly with individual detention center staff, Regional OJS Special Agents in Charge (SAC) and BIA Regional Facilities to review detention facility needs, identify new deficiencies, and prioritize repair needs. OJS also reviews the Detention Facility Condition Index ratings to compare the number of facilities in good, fair and poor conditions to identify highest deficiency repair needs for submittal for project funding requests.

There are also actions specifically focused on the information systems which are used to identify deficiencies and ensure there are funded projects to abate the deficiencies. These systems include the Indian Affairs Facility Management System (IA-FMS), which integrate work management (Deferred Maintenance) and asset management (Facility Condition Index). OJS has correctional staff trained on IA-FMS and are creating work orders for repair funding submittals. Further, DFMC is working with Tribal personnel to make the IA-FMS, which is used to track facility projects, more accessible to Tribal employees who work at Tribal contracted and compacted detention centers. Asset data and deferred maintenance data management improvement is an on-going effort to review for accuracy and updates by DFMC and OJS personnel.

The Public Safety and Justice Site Assessment and Capital Investment (PS&J SA-CI) process is under development in FY 2021. Indian Affairs will implement a PS&J SA-CI pilot program, now under development, to prioritize and select annual replacement/renovation projects for OJS. Implementing this pilot will use a standardized, data-driven, transparent process thus expanding the amount of information available to understand the condition of facilities.

Question 3. Overall, how much would it cost to replace the law enforcement and detention centers that are currently in poor condition?

Response: The average cost of facility replacement is \$20 million. There are currently 14 locations in Poor Condition. We estimate at least \$280 million to replace facilities listed in Poor Condition. Given the current increases in construction equipment and services we estimate \$20 million in contingency funding would be needed and \$15 million (5 percent of total project funding) for additional administrative surge needed to support implementation. Taking all factors into account the cost would be \$315 million.

a. What infrastructural deficiencies define a BIA detention center as being in “poor condition?”

Response: In general, the Facility Condition Index (FCI) is calculated by dividing the total Deferred Maintenance (DM) for the building or site and dividing by its Current Replacement Value (CRV). If the result is $>.10$, the location is considered to have an FCI Condition of “Poor.”

DM at the location is the cost to address outstanding deficiencies related to safety, health, Americans with Disabilities Act, environmental, structural, mechanical, grounds, quarters, etc. and costs to bring the facility into compliance with IA-adopted codes, policy and mandatory standards. The deterioration of facilities threatens the health and safety of occupants and impairs effective utilization of the facility. Deferring cyclical and regular maintenance also increases the need for costly major repairs and/or early replacement. There maybe additional infrastructure needs related to the facilities, such as non-BIA roads or water, power, or broadband infrastructure that need upgrades but are outside the control of Indian Affairs because they are not owned by BIA.

b. What did the poor condition of BIA detention centers impact inmate populations during the Coronavirus pandemic?

Response: Older facilities in poor condition generally lack negative-pressure isolation cells (i.e. isolation rooms with ventilation that does not flow into the general ventilation systems) which impacted being able to quarantine new inmates being booked into the facility or quarantine inmates testing positive for the COVID-19 virus.

Question 4. Generally, in what ways are tribal governments impacted by BIA’s deferred maintenance backlog?

Response: The facilities in the Indian Affairs inventory are either occupied by tribal staff and students or federal staff that are carrying out services for tribal communities. When these facilities do not receive proper maintenance, they fall into disrepair or become unsafe and the services

provided cannot be carried out at the optimum level. Reduced service levels have a direct detrimental impact on the tribal communities and students being served.

Maintaining the physical structures and school environments and PS&J facilities that are safe, clean, and secure is even more important given the recent lessons learned from COVID and the disproportionate impact on Tribal communities that resulted in greater rates of infection, hospitalization, and death.

Question 5. The BIA budget includes a proposal to re-establish the Indian Land Consolidation Program in the Bureau of Indian Affairs.

a. Can you explain the history behind this program and why it is vital to tribal infrastructure.

Response: The Land Buy-Back Program was established by Secretarial Order to ensure implementation of the land consolidation aspects of the *Cobell v. Salazar* Settlement, which made \$1.9 billion available for purchasing fractional interests in trust or restricted lands within a 10-year period. Fractionation has been reduced substantially through the Land Buy-Back Program. However, resources made available through the *Cobell* Settlement are not sufficient to purchase all fractional interests and many will remain after the Land Buy-Back Program ends in 2022. Without sustained land consolidation efforts, Indian lands will continue to fractionate and lose trust status.

Fractionated ownership of allotted Indian lands is a pervasive problem which hinders the Federal Government’s ability to administer and manage the lands, and maintain accurate, up-to-date ownership records and trust fund accounts. Land consolidation assures the optimum integrity and usefulness of systems in terms of trust asset/resource management. A disproportionate share of budgetary resources is required to administer services on fractionated lands.

The investment in Indian land consolidation is critical to providing tribes with greater control over their reservations. When lands are fractionated, tribes have to work with numerous individual fractional owners, many of whom do not live on the reservation, before they can move forward with land-based projects important to their communities. With less fractionated lands, tribe are better able to manage larger blocks of their lands for economic development purposes, natural resources management, and infrastructure.