



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

APR 15 2024

The Honorable Harriet M. Hageman  
Chair  
Subcommittee on Indian and Insular Affairs  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Hageman:

Enclosed are responses to questions for the record submitted to the Department's witness, Bryan Newland, Assistant Secretary for Indian Affairs, following his appearance before your Subcommittee at an oversight hearing on May 25, 2023 on "Examining the President's FY 2024 Budget Request for the Bureau of Indian Affairs and Office of Insular Affairs." These responses were prepared by the Office of the Assistant Secretary – Indian Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela L. Barkin  
Acting Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Teresa Leger Fernández  
Ranking Member

Questions for the Record

U.S. House Committee on Natural Resources, Subcommittee for Indian and Insular Affairs  
Oversight Hearing: “Examining the President’s FY 2024 Budget Request for the Bureau of  
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**Questions from Chairman Westerman**

**Question 1: This year’s request for Assistant Secretary Administrative Support is for \$1.81 million, which includes support for the Office of Self-Governance. The narrative does not include any discussion of funding to support the Department’s negotiated rulemaking required by Section 413 of the PROGRESS for Indian Tribes Act.**

- a. Please explain where the funds to support that rulemaking prior to April 20, 2023, came from.**

**Response:** The FY 2024 request for Assistant Secretary Support is \$23.2 million. The Office of Self Governance (OSG) is funded within this amount. The funding to support PROGRESS Act implementation, including negotiated rulemaking, was provided in the FY 2021 and FY 2022 appropriations with two-year availability, which allowed for use on the rulemaking through April 20, 2023.

**Question 2: The Department’s authority to promulgate the negotiated rule expired on April 21, 2023. Can you confirm whether the negotiated rulemaking committee required by the PROGRESS Act has ceased activity after the expiration of authority to promulgate the rule as required by the PROGRESS Act?**

**Response:** The Department ceased negotiated rulemaking activities after April 20, 2023, when the expiration of authority provision at Section 413 of Public Law 116-180 came into effect, leaving the Committee with no authority to continue the negotiated rulemaking. On September 30, 2023, in Public Law 118-15, Section 2102, Congress extended the expiration of authority provision to expire on December 21, 2024. The Committee resumed work with meetings in November 2023 and performed no work during its lapse in authorization.

- a. If you have not asked for more funding to support negotiated rulemaking, is it the Department’s position that the negotiated rulemaking should not proceed?**

**Response:** The Department’s position is that the negotiated rulemaking should proceed. Following the passage of the PROGRESS Act on October 21, 2020, the Department appointed a Designated Federal Officer to stand up and support the negotiated rulemaking committee within days. The logistical aspects of forming the committee took longer than is customary for a negotiated rulemaking due to the COVID-19 pandemic and transition between administrations. Additionally, the consensus-based process, in which the Federal and Tribal members were engaged up until the lapse in statutory authority, takes additional time beyond a traditional rulemaking. In line with the requirements of the PROGRESS Act, the Department believes that the consensus-based model provided for by the negotiated rulemaking process will result in regulations that will best enhance Tribal self-governance.

Additional funding has not been specifically requested for the PROGRESS Act implementation. All funding for the OSG, which implements the PROGRESS Act, is under the Assistant

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Secretary-Indian Affairs Support line. With the passage of the PROGRESS Act, OSG has had new demands placed on its staff and new duties required by the self-implementing provisions of the Act that are independent of the negotiated rulemaking.

- b. Can you confirm that the Department of the Interior is not spending any previously appropriated funds on the negotiated rulemaking process after the authority to promulgate has expired?**

**Response:** The Department did not spend any previously appropriated funds on the negotiated rulemaking process during the lapse in the authority to promulgate the PROGRESS Act regulations.

**Question 3: Please follow up with the committee with specifics of how much in federal funds were set aside for facility building or renovation in Indian country through all the supplemental funding bills that Congress has passed since 2020, including in:**

- a. the CARES Act,**
- b. the American Rescue Plan and;**
- c. the Inflation Reduction Act.**
- d. Please include if funds were specifically set aside for detention**
- e. How much of those funds have been expended and how much is left to spend?**

**Response:** No CARES Act funding was specifically set aside for building or renovation. The majority of CARES Act funding was allocated to Tribes, where they could use funds for purposes such as improvements to ventilation systems for Tribal facilities if that was necessary.

No funding provided to the Bureau of Indian Affairs (BIA) under the American Rescue Plan Act (ARPA) was provided by Congress just for building or renovation. The majority of funding was allocated to Tribes, where they could use funds for purposes such as improvements to ventilation systems for Tribal facilities if that was necessary. Bureau of Indian Education (BIE) ARPA funds could be used for facility enhancements to address COVID-19 related health issues such as improving HVAC systems, buying filtration systems, installing touchless water fountains, and improving or outfitting classroom and common spaces for safer instruction during the pandemic.

Inflation Reduction Act funds provided to BIA are for climate resilience and the Tribal Electrification Program. Climate resilience funds could be used for relocation of facilities, which can include building new facilities in low-risk locations, but that is determined by Tribes proposing to use the funding. The goal of the Tribal Electrification Program is to electrify homes with zero emissions energy systems. This program could include retrofitting existing homes but would not include facility construction or renovation activities that are not related to electrification purposes.

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BIA ARPA funding was identified for Public Safety and Justice (PSJ) programs, and it could be used for all PSJ operations as needs varied by Tribe or direct service program—it was not focused just on detention centers. There are no BIA APRA funds still available to spend.

Lastly, as noted above there were no facilities-specific funding set aside.

**Question 4: Please expand on your answer about the Bureau of Indian Affairs plan to address the rest of the facilities that need repair or upgrades throughout Indian country.**

**Response:** The FY 2024 budget includes a total of \$75.3 million for Public Safety and Justice Construction, this is \$23.8 million or 46-percent more than FY 2023. This additional investment is essential to ensure that Indian Affairs more quickly replaces facilities in poor condition and addresses deferred maintenance needs in a timely manner.

**Question 5: Please expand on your answer about how you are working with tribal police departments to solve issues of retention. Is there an area where Congress can assist, beyond providing more funds?**

**Response:** A common concern we hear from Tribes regarding retention is lack of sufficient resources to ensure their officer salaries remain competitive with other law enforcement organizations at the county, state, and Federal levels. To assist Tribes, our FY 2024 request funds public safety and justice programs at an additional \$62.1 million, or 11 percent, above the 2023 enacted level, supporting expanding Tribal needs in policing, detention, and Tribal courts.

We also believe supporting legislation such as the Parity for Tribal Law Enforcement Act helps keep Tribes competitive and retain critical personnel. This proposed legislation lowers administrative barriers and gives Tribal law enforcement officers increased access to the same Federal benefits, including retirement benefits, as other Federal law enforcement officers.

**Question 6: Last month the DOI Inspector General released a report that again highlighted the longstanding health and safety issues at detention facilities managed by three tribes in Arizona. The IG report stated that given the seriousness of the issues found at these facilities, they were being brought to BIA’s attention before a final draft audit report was issued on the larger performance audit of BIA funded and/or operated detention programs.**

- a. **Are you aware of that report, and what specific actions are you taking at this time to resolve those issues?**
- b. **What projects have specifically been completed? What is BIA’s plan to address the rest of the facilities that need repair or upgrades?**

**Response:** The Department concurs with the findings in the Office of the Inspector General (OIG) report. The Indian Affairs Office of the Deputy Assistant Secretary-Management, Office of Facilities, Property and Safety Management (OFPSM) has oversight of facility improvement

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construction activities managed by the Bureau of Indian Affairs regional offices for the Office of Justice Services (OJS). OFPSM holds regular meetings with OJS, and local and regional facility management personnel to ensure that identified deficiencies in the Draft OIG Management Advisory are promptly addressed. The working group is finalizing a plan and timeline to ensure that such deficiencies identified in the OIG report, to include other significant deficiencies identified by the local and regional facility management personnel, are funded and corrected.

The heating, ventilation, air conditioning, and lighting deficiencies at the San Carlos Apache Detention Center have been corrected and the Department is in the process of awarding and executing a contract to complete the structural repairs. OFPSM is working to fund the repairs for the Tohono O’odham facility. The White Mountain Apache Detention Center roof was assessed in May 2019 and December 2020 with no findings of serious or life-threatening nature. A new contract to assess and provide recommendations is in the process of being funded and awarded. Pending the assessment report, identified repairs will be addressed at the White Mountain Apache Detention Center.

**Question 7: Please expand further on the Tribal Climate Resilience program and answer:**

- a. Why has most of the funding for this program has only been put towards planning costs?**

**Response:** In past years, we received many more applications for funding than we had funding available for; we simply did not have the budget to support implementation projects. Additionally, to meet the emerging needs of Tribes, the focus had been on planning and capacity building. With the FY 2022 Annual Awards solicitation, given increased funding through the Bipartisan Infrastructure Law and now in FY 2023 with the Inflation Reduction Act as well, awards have opened up to include implementation funding. The FY 2023 awards solicitation allows up to \$4 million per award for implementation projects. This funding is timely, as many Tribes have already built capacity and created plans from which they can begin implementation activities.

- b. Shouldn’t the bulk of money that Congress chooses to appropriate for this program go towards implementing plans and providing tribal communities tools to use to address changes in their community?**

**Response:** Yes, the bulk of funding will continue to go directly to Tribes for their planning, capacity building and implementation of projects. As mentioned before, there has been a great need since the beginning of this program for Tribes to build capacity and create plans. Beginning with the FY 2022 awards program, implementation has been included as an available category of funding.

**Question 8: Please further expand on your answer of how the Bureau is planning to work to reduce land fractionation, particularly regarding probate.**

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- a. **What program changes is the Bureau working towards that will move towards the goal of less fractionated Indian lands?**
- b. **What policy changes does Congress need to implement to work towards the goal of less fractionated Indian lands?**

**Response:** The FY 2024 budget requests \$30.5 million for Indian Land Consolidation to fund the Trust Land Consolidation Program (TLC). Currently, BIA is considering options that may be available for adjusting the criteria for appraisals which are required for land consolidation efforts. More extensive use of mass appraisals could impact reduction in fractionation. This might allow Tribes to have more expansive information regarding interests within their reservations. These identified appraisal options will be used to assist in planning for upcoming TLC offer sets along with identifying additional potential willing sellers. BIA is considering how these options may impact recent probate decisions and the heirs. In addition, BIA will continue to support Tribes with the TLC process to fund their own land consolidation efforts.

Currently, there are no specific policy changes needed for TLC.

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### Questions from Ranking Member Grijalva

**Question 1: BIA has been historically underfunded, does this year’s budget request adequately meet BIA’s current needs? If it doesn’t, can you elaborate on how much of a gap remains?**

**Response:** It has been difficult for Federal funding to keep up with the needs of Indian Country, much less track with growth in annual inflation. While these challenges are significant, the BIA is employing multiple strategies to advance progress wherever possible. Within budget resources available, the BIA is targeting funding to meet the highest priority needs and coordinating with Federal partners to maximize our investments. In recognizing that relying on additional appropriated funding is not the only solution, we have initiated several management initiatives to address challenges identified by Tribes through the Tribal Interior Budget Council budget formulation process.

**Question 2: The ongoing debt ceiling negotiations are proposing claw backs of unobligated pandemic relief funds, among other concerning proposals.**

- a. **Can you describe what the impacts to BIE would be if Congress decided to take away unobligated pandemic funds?**
- b. **In addition, how would BIE services be impacted if the agency is forced to return to FY 2022 enacted levels, as proposed by House Republicans?**

**Response:** The proposed reduction would cut Bureau of Indian Education (BIE) funding by \$174.2 million, which would, at a minimum, not allow Tribal schools to keep up with rising costs, especially during development of a modern learning system in a post-COVID world. This is especially important given that BIE schools are funded below national per pupil funding averages. Going back to FY 2022 levels will challenge BIE’s ability to keep up with inflationary costs, pay their teachers adequately, and address other operational needs.

Additionally, the latest BIE school facilities condition assessment shows over 80 BIE schools are in poor condition. Reductions would add to an already significant backlog in needed repairs or replacement facilities for BIE schools. The proposed cuts would also slow implementation of existing School Construction Projects due to insufficient staffing to keep projects moving. The FY 2024 President’s budget includes additional funding for construction staff to improve the timeliness of construction projects.

**Question 3: I’ve been pleased to see the growing interest in tribal co-management in recent years. Could you update us further on the Department’s work in this space?**

**Response:** On November 15, 2021, Secretary Haaland and Secretary of Agriculture Vilsack issued Secretary’s Order 3403: Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters. At last year’s Tribal Nations

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Summit, on November 22, 2022, Secretary of Commerce Raimondo joined Secretarial Order 3403.

The DOI has made notable progress implementing Secretarial Order 3403. A critical component of success is ensuring that Bureaus and Offices have the necessary tools and support to pursue co-stewardship agreements. Over the past year, DOI has finalized key policies and resources to bolster the foundation for long-lasting and meaningful co-stewardship with Tribes.

In 2022, DOI updated its Departmental Manual to provide Bureaus and Offices with tools for advancing co-stewardship. Entitled “Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community,” the new part 502 establishes durable means for implementing the policies and directives of Order 3403. These include a Committee on Collaborative and Cooperative Stewardship (Committee). Composed of senior officials, the Committee will help ensure the consistent implementation of co-stewardship by DOI’s Bureaus and Offices. The Committee and the Solicitor’s Working Group on Collaborative Stewardship convened their inaugural meeting in early 2024.

Also in 2022, the BIA issued a national policy memorandum, NPM-DBIA-2, to establish BIA’s policy of supporting co-stewardship with Tribal Nations. Among other things, the memorandum directs BIA leadership, supervisors, and staff to proactively engage Tribes and other Federal land and water managers nationally to facilitate and support their efforts at facilitating co-stewardship arrangements. The BIA renewed this policy memorandum in 2023.

In addition to policy guidance, DOI developed two training courses to provide employees with information on co-stewardship authorities, policies, and best practices. The first course is an online training available to all DOI employees designed to raise awareness of the importance of co-stewardship and foster stronger working relationships with Tribal Nations. The second course is an in-person training for all senior executives and leadership that will provide a sound understanding of the foundations of Indian law, the unique political relationship between Tribal governments and the United States, and the principles and practices of co-stewardship as it relates to DOI’s management of Federal lands and waters.

**Question 4: This year’s budget request includes increased funding for the Tribal Climate Resilience Program and the Climate Relocation Grant Program. Could you share the importance of these programs and how they support tribal governments responding to climate change?**

**Response:** This funding has been critical to Tribes faced with the difficult decisions regarding relocation, managed retreat, and protect in place from the devastating effects related to climate change and disasters within their communities. Funding helps them build capacity by creating or updating their planning documents and then carrying out implementation of those plans. Last year, funding was dedicated to three select Tribes for relocation implementation for up to \$25 million per Tribe and to eight Tribes to work on planning or implementation for up to \$5 million per Tribe. In addition to that, through the FY 2022 Annual Awards Program, we were able to



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support eight additional implementation projects totaling nearly \$11 million in funding, which is roughly one quarter of available funding. This funding supports activities such as relocation of buildings, protection of critical community water/sewer infrastructure, and implementation of Tribal planned priorities.

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### Questions from Representative Leger Fernández

**Question 1: The FY 2024 budget proposal also includes \$199.8 million for various Construction activities. As we’ve heard time and time again from tribal leaders, there are many existing infrastructure issues in Indian Country.**

**How does BIA plan to swiftly implement these proposed funds to ensure that physical infrastructure is not a limiting factor to tribal governments’ abilities to provide services to their communities?**

**Response:** This request is to support replacement and deferred maintenance projects to address needs at Public Safety and Justice facilities, the irrigation rehabilitation program, needs at regional and agency offices serving Tribal programs and operations in Indian Country.

The budget includes \$10.0 million to address water quality issues at BIA-owned water infrastructure, including systems of concern identified by EPA. The BIA budget also includes a \$6.8 million increase to support the Administration’s governmentwide goal to accelerate the use of zero-emission vehicles (ZEVs) to enable a clean transportation future. Funds will be used to acquire ZEVs, install solar panels and related charging infrastructure, and perform planning and integration to support the initiative across activities at the Department under the Office of the Assistant Secretary for Indian Affairs.

Additional investments in infrastructure, energy development and broadband has resulted in increased demands for realty services, administrative support, and interagency engagement.

The budget includes several key increases to build our administrative capacity to meet the demand in Indian Country, including the following:

- \$3.4 million for Assistant Secretary Support capabilities that are critical to being responsive to Tribes and the public, including White House Council on Native American Affairs, Office of Regulatory Affairs and Collaborative Action, Office of Federal Acknowledgement, and Freedom of Information Act Office.
- \$10 million for critical administrative needs, which includes Human Resources capacity and modernization to advance retention and recruitment, additional budget staff to increase timeliness and accuracy of payments to Tribes, and additional staff for 105(l) leases—we are on pace to have over 300 leases by the end of FY 2023. The section 105(l) program allows improvement of infrastructure and facilities in Indian Country more quickly than would be possible under the Department’s direct provision of services.
- \$3.4 million for staff to process and timely complete leasing actions, rights of way, and other approval processes; and to increase staff necessary for probate cases.

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**Question 2: Similarly, during the oversight hearing on economic development earlier this year, we heard about the importance of roads for growing tribal businesses and economic opportunities. BIA has proposed an increase of \$12 million for Roads Maintenance. This builds upon the investments made in the program under the Infrastructure, Investment, and Job Act last Congress.**

**Can you provide us with a status update on the rollout of these funds and how the budget proposal will further support the Bureau’s current work?**

**Response:** The Infrastructure, Investment, and Job Act (IIJA) did not provide additional funding for BIA Road Maintenance, it only authorized funding—that is why the increase of \$12 million we are requesting in FY 2024 is critical.

The IIJA did include additional funding for the Department of Transportation’s Tribal Transportation Program. The BIA helps to award these funds through Indian Self-Determination and Education Assistance Act (ISDEAA) funding agreements to move them more quickly to Tribes.

The requested \$12 million is allocated by formula to BIA Regions, which then distributes the funding to the BIA agencies in that Region or provides funding to Tribes under ISDEAA, as amended. Over 70 percent of the eligible Tribal governments contract the Road Maintenance program, which allows for quick disbursement and for their priorities to be addressed while also providing jobs to Tribal members and capacity building.

**Question 3: The budget request also includes \$7 million for the Secretary’s Federal Indian Boarding School Initiative. This is an issue that Committee Democrats have tracked closely and we are pleased to see it come to fruition within the Department.**

- a. Can you provide us with a status update on the implementation of the recommendations included in the 2022 Federal Boarding School Initiative Investigations Report?**

**Response:** The Department plans to release Volume II of the Federal Boarding School Initiative Investigative Report in 2024, which will include more information on: approximating the total amount of Federal support for the Federal Indian boarding school system and expanding the school summary of each Federal Indian boarding school site into a profile.

As part of the Federal Indian Boarding School Initiative, and in response to recommendations from the Volume I report, Secretary Haaland launched “The Road to Healing Tour.” This is a commitment to travel to communities across the country to hear directly from survivors of the Federal Indian boarding school system.

Secretary Haaland, Assistant Secretary for Indian Affairs Newland, and other U.S. officials have held nine day-long meetings in Oklahoma, Michigan, South Dakota, Arizona, Washington,

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Minnesota, Southern California, Northern California, Alaska, New Mexico, and Montana. The Road to Healing visits were public community events and included opportunities for individuals to identify themselves as survivors of the Federal Indian boarding school system and share both oral and written testimony.

To better document Federal Indian boarding school attendee experiences, on September 26, 2023, the Department announced the launch of the Boarding School Initiative (BSI) Oral History Project, which will be dedicated to documenting boarding school survivor experiences.

The Department is currently reviewing the Federal lands on which historical Indian boarding school sites were located to examine potential options for protection, preservation, reclamation, and co-management of sites.

The Office of the Assistant Secretary for Indian Affairs, the Smithsonian National Museum of American History, and the U.S. Library of Congress are participating in ongoing discussions about how to support a specific repository of Federal Indian boarding school records and oral history artifacts.

The Department will continue its engagement with the Department of Health and Human Services, including the Indian Health Service and Substance Abuse and Mental Health Services Administration, to coordinate trauma-informed survivor-centered support for survivors throughout the duration of the BSI. Additionally, the Department recently announced the Bureau of Indian Education award for an additional five-year contract to increase access for behavioral health and wellness support to all students and staff at Bureau-funded schools and programs. Initially designed to increase access to services during the COVID-19 pandemic, the Behavioral Health and Wellness Program provides virtual counseling and on-site crisis services. The Department also maintains ongoing communication with the Office of Army Cemeteries, U.S. Army.

To further the recommendation of supporting non-Federal entities, the Office of the Assistant Secretary for Indian Affairs has met with several entities, including religious institutions and organizations, that have released or are considering releasing records.

### **b. How does the budget proposal support this ongoing work?**

**Response:** The budget proposal for the Secretary’s Federal Indian Boarding School Initiative supports all aspects of ongoing work described above, to include the ongoing investigation, the Secretary’s Road to Healing tour, the Oral History Project, including developing a Federal BSI repository to ensure proper archival practices of records gathered for the BSI, supporting Indian health research related to impacts of the boarding school system, and establishing a permanent collection memorializing survivors of the era of Federal Indian boarding schools.

**Question 4: As you know well, Indian Country maintains complex criminal jurisdictions across tribal, state, and federal entities. BIA plays a critical role in providing law**

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**enforcement services and resources to tribes, which is something that we support here in Congress.**

- a. That said, how does this year’s budget proposal prioritize law enforcement and public safety for tribal communities?**
- b. What more can Congress do to help the Bureau support tribal governments?**

**Response:** A common concern we hear from Tribes regarding public safety is lack of sufficient resources to ensure adequate law enforcement, corrections, and court personnel to provide the services needed in their communities. Additional funding also helps Tribal salaries remain competitive with other public safety organizations at the county, state, and Federal levels. To assist Tribes, our FY 2024 request prioritizes public safety and justice programs with an additional \$62.1 million, or 11 percent, above the 2023 enacted level, supporting expanding Tribal needs in policing, detention, and Tribal courts.

We also believe supporting legislation such as the Parity for Tribal Law Enforcement Act helps keep Tribes competitive and retain critical personnel. This proposed legislation lowers administrative barriers and gives Tribal law enforcement officers increased access to the same Federal benefits, including retirement benefits, as other Federal law enforcement officers.

To ensure these programs have adequate facilities in which to operate, the FY 2024 budget also proposes a total of \$75.3 million for Public Safety and Justice Construction, which is \$23.8 million or 46 percent more than FY 2023. This additional investment is essential to ensure that Indian Affairs more quickly replaces facilities in poor condition and addresses deferred maintenance needs in a timely manner.

**Question 5: This year’s budget request includes a proposal to shift funding for the Office of Hearings and Appeals Probate Hearings Division from the Bureau of Trust Funds Administration (BTFA) to BIA.**

**Would you elaborate on this proposed funding shift and what it will improve within the agency’s work in this area?**

**Response:** This transfer will align the Office of Hearings and Appeals (OHA) Probate Hearings Division function with BIA’s Probate Real Estate function, allowing the Department to process probate cases more efficiently to completion by improving coordination between BIA and OHA. To meet the Department’s goal of closing Indian Trust Estates efficiently, the coordination of the OHA and the BIA is imperative. Daily coordination occurs between the two offices as cases move through the probate process to prepare the probate cases for distribution of the trust assets and closing of the estate. The shift in funding will allow for the budget process to view the needs of both organizations to avoid a potential bottle neck if both organizations are not funded to handle the same case work. Bottlenecks could potentially occur if the BIA is funded for 4,000 cases, but the OHA is unable to process 4,000 cases.

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**Questions from Representative Carl**

**Question 1: It is my understanding the use of land purchased using this money must be consistent with the rules of the Land and Water Conservation Fund. What happens if a hundred years from now a Tribal Council wants to use the land in a different way to benefit their community?**

**Response:** Consistent with the other Department Bureau’s Land and Water Conservation Fund (LWCF) programs, BIA’s provisions state that “no property acquired or developed with LWCF money shall be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior.”