



**SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY**

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March 25, 2024

The Honorable Harriet M. Hageman
Chair
U.S. House of Representatives Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
1324 Longworth House Office Building
Washington, D.C. 202515

Dear Chair Hageman,

On behalf of the Salt River Pima-Maricopa Indian Community ("SRPMIC") thank you for the opportunity to provide testimony to the Subcommittee on March 6, 2024 on the issue of **"Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs' 638 Contracting"**. I am hopeful the testimony will help the Subcommittee, in its oversight capacity, to engage the Department of Interior, Bureau of Indian Affairs (USDOI-BIA), to seek improvements in this important policy area.

As such, please find the attached answers to the Subcommittee's supplemental follow up questions. As always, the SRPMIC look forward to working with you and the Subcommittee to improve the delivery of service of tribal Self-Determination Contracts and Compacts.

If you have additional questions please do not hesitate to contact Mr. Gary Bohnee, Office of Congressional and Legislative Affairs, gary.bohnee@srpmic-nsn.gov, 480-362-2737.

Sincerely,

Martin Harvier
President

Enclosure

1. In your written statement, you mentioned inefficiencies within the Bureau of Indian Affairs (BIA) during the COVID-19 pandemic that impacted your tribe’s ability to provide services.

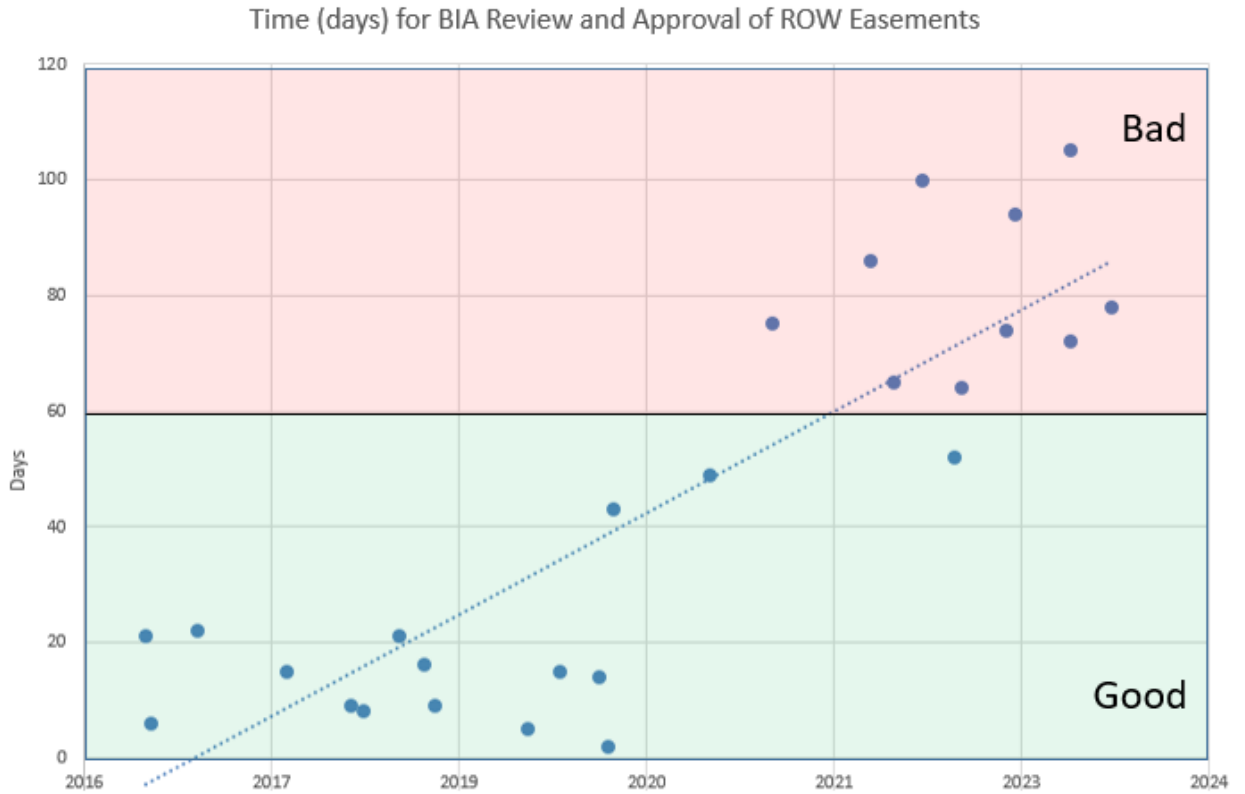
a. Has BIA improved in this area, and has the agency created more opportunity for tribal staff to have the training and access needed to run programs included in your self-governance compact?

While the initial issues raised regarding training for staff for Salt River Pima-Maricopa Indian Community (SRPMIC) TAAMS access have mostly been resolved we have encountered an additional issue for Tribal staff that has impacted SRPMIC’s ability to provide compacted services.

On Thursday, March 7, 2024 SRPMIC was informed that the Salt River Agency would be receiving our Right of Way packets, but they will now be reviewed at the Western Region Office (WRO) level. Once the review has been completed, the Salt River Agency (SRA) would then approve the packet. This strays from the previous process of the SRA reviewing the packet with WRO approving the packet. SRPMIC was never notified in this change of process and this change in approval process has since created a backlog in right of way approvals pending with the BIA. Below are the pending packets and number of days pending.

Packet Name	Date Hand Delivered to SRA	Number of Days Pending as of 3/25/2024	Additional Comments
Osborn Road SR 28-2 Assignment and Assumption	10/17/23	160 days and counting	This same packet had been previously returned from the Agency for a technicality involving the National Tribal Transportation Facility Inventory update
Osborn Road SR 28-1 Administrative Modification	11/02/23	144 days and counting	
Osborn Road SR 28-1 Partial Mutual Termination of Grant of Easement	11/02/23	144 days and counting	
Allotment 5001 and Jackrabbit Road	1/16/24	69 days and counting	
Bunnyville Subdivision	2/27/24	27 days and counting.	This same packet had been previously returned from the Agency after 70-days for a critical defect involving the NEPA clearance documents

As per the federal regulation, 25 CFR 169.123 (Rights of Way Over Indian Land), BIA is supposed to grant or deny the right-of-way within 60-days of receipt of a complete package. We are not aware if they have the necessary resources at the agency level, or if the agency was instructed to include the WRO, or if there is another reason. In any instance, the time of BIA review and approval of Right of Way Easements have declined significantly since 2006, per the graph below.



This delay in approvals can negatively impact SRPMIC's future Trust Evaluation's. The decline in approval of Right of Way packets greatly impacts SRPMIC's ability to provide trust functions to members and needs to be addressed immediately.

2. Please expand on the issues raised in your testimony surrounding the tribal trust evaluation audits with the BIA and where you see room for improvement.

Under the Indian Self-Determination and Education Assistance Act in accordance with 25 CFR 1000.354 the trust evaluation should be completed annually. Since 2006, Salt River Pima-Maricopa Indian Community has only received 7 completed audits as follows:

- 2006
- 2012
- 2007
- 2016
- 2009
- 2022
- 2011
- *Pending 2024*

We understand that there may be staffing issues that prohibit the Division of Trust and Review from maintaining annual reviews for self-governance tribes. Our recommendation would be to provide

adequate funds for the Bureau of Indian Affairs to address the staffing issues to maintain the codified legislation as it pertains not only Trust Evaluations, but BIA functions as a whole.

3. Several witness statements mentioned the Department of the Interior's lack of timeliness to distribute program funds under self-governance compacts.

a. Could you further elaborate on how this delay directly impacts tribes?

Without advanced appropriations and the lack of timeliness to distribute funds under the self-governance compacts Tribes are left with two options.

- 1. Tribes that are capable of diverting different streams of funding to cover PSFA's will do what is possible to meet the needs of Tribal members.**
- 2. Tribes without the ability or flexibility to cover PSFA's are left to delay the delivery of PSFA's to Tribal members until funding is provided.**

In either instance the delay in funding can impact the Tribe's ability to provide the compacted or contracted PSFA's, which ultimately impact Tribal members.

b. Could you further elaborate on how any funding delays have specifically impacted your tribe's self-governance programs?

Since FY 2020, SRPMIC has not received a fully executed Annual Funding Agreement (AFA) for the fiscal year (FY) prior to October 1st. Without the AFA for the FY, SRPMIC does not receive a signed Authority to Obligate (ATO) until well into the FY. With this delay SRPMIC has to either rely on any carryover or Tribal funds to supplement PSFA's until ATO's are issued and money can be drawn. For example:

- FY 2023 SRPMIC did not receive the 1st FY 2023 ATO until January 31, 2023, approximately 4 months into FY 2023.**
- FY 2024 SRPMIC did not receive a fully executed amendment to the Multi-Year Funding Agreement and AFA until February 12, 2024 and the 1st FY 2024 ATO was issued on February 29, 2024, approximately 4 months and 28 days into FY 2024.**

Without the timely funding that is due to Tribes to perform inherently federal functions, we are left to find alternative funding sources to maintain services until self-governance allocations are produced.

SRPMIC recommend the addition of awarding officials within the BIA and the Office of Self-Governance to help facilitate the movement of ATO's to Tribes. As of now the only awarding official in the Office of Self-Governance is the Director and when she is not available a backlog of ATO's accumulates which delays the necessary funds being distributed to Tribes.

4. Where could Congress legislate regarding the 638 compacting process that would improve the 638 negotiations?

a. And what regulatory changes, if any, would you suggest to the Department of the Interior to improve the 638 compact negotiation process?

With the pending implementation of the PROGRESS Act, the law reconciles Title IV (BIA/DOL programs) and Title V (IHS programs) of the Indian Self-Determination and Education Assistance Act and reconciles the differences in the two types of compacts to encourage more efficiency by Indian

Tribes who administer both types of Compacts. There are favorable changes in this section that require the Federal Agencies to act in “good faith” and interpret the federal laws, regulations, and executive orders in a manner that will facilitate the implementation of Self-Governance Agreements. There more technical changes to the Funding Agreement negotiations regarding the Final Offer process and timelines, and under what situations the Federal Agencies can deny these Final Offers. There are other pro-tribal provisions in the law, including a provision that protects tribes from the Agencies trying to impose unauthorized terms in a compact or funding agreement. Overall these amendments are in provide more flexibility for the Community in its administration of its BIA and IHS Self-Governance Compacts. Other than this, the rulemaking process does not help (as is) with the deficiencies previously noted

5. Has the issue of inherent federal functions impacted what programs and/or functions your tribe was able to include in your 638 compact?

a. If yes, what was the function and/or program that was deemed an inherently federal function?

In FY 2017 SRPMIC assumed the Land Titles and Records (LTRO) function that was deemed an inherently federal function after many years of discussion between SRPMIC and BIA.

b. And are you aware of any other tribes that were able to compact that function and/or program?

SRPMIC is aware of other Tribes that were able to compact the LTRO. We are also aware of additional Tribes who wish to compact LTRO but are being told that this is not an inherently federal function and being denied the addition to their compact.