

**Written testimony of President Shannon Holsey, on behalf of Stockbridge Munsee  
Community**

**Senate Appropriations Committee-**

**Subcommittee on Interior, Environment, and Related Agencies**

**May 10, 2018**

On behalf of the Stockbridge-Munsee Community, this testimony addresses important tribal programs serving American Indians and Alaska Natives in the Department of the Interior Bureau of Indian Affairs regarding mandatory appropriations, Streamlining of Fee-To-Trust Process, and Opposition to Bureau of Indian Affairs Reorganization.

**Mandatory Appropriation**

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 2017. 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 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, as 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.

### **Need Mandatory Appropriations for and Streamlining of Fee-To-Trust Process**

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, our reservation was diminished and disestablished. 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 has needed to use the federal fee-to-trust land process to regain a land base that can sustain the Tribe.

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. I would like to note that the off-reservation application process is currently being considered for rulemaking and we are on record for not supporting such rulemaking for a number of reasons, including the additional burdens placed on tribes and a devaluing of tribal interests in favor of local governments.

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. We presently have 4 applications that were submitted in 2017 before the local Bureau of Indian Affairs agency office (Great Lakes Agency). We have 3 bundled applications that are on appeal to the local BIA regional office (Midwest Region) since the agency decision to take land into trust was appealed by local governments. We also have 2 bundled applications that are before the Interior Board of Indian Appeals, which is the next stage of appeal.

Presently, in the best of circumstances, the application process takes 1-2 years. However, if a 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 while administrative appeals are pending. For example, in 2017, my Tribe had 2 applications complete the fee-to-trust process. 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. All of these applications did involve administrative appeals due to standing local governments opposition. Of the applications currently being appealed, the applications that are before the regional office were all submitted in 2012 and 2013 and the agency's decision has been under review by the regional office for about 1.5 years so far. This means that these applications have been pending for about 6 years and there is still another level of administrative appeal that the local governments can use to oppose the land going into trust.

I share this background information to show how there is a constant need to have appropriations to ensure staff time and attention on the fee-to-trust process. We need adequate numbers of trained federal employees working at all levels of the fee-to-trust process. Why has it already taken the regional office over 1.5 years to review the decision by the agency office – and we do not have a decision? We need more staff dedicated to working on applications and their appeals to keep the process moving smoothly and quickly.

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.

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.

### **Opposition to Bureau of Indian Affairs Reorganization**

At this time, I would like to also touch on the proposed reorganization of the Department of Interior, including the Bureau of Indian Affairs. I feel that this reorganization, at least in relation to the BIA, would be a waste of federal funds and has the potential to actually hurt tribes. At present, the Midwest Regional Office provides services in relation to all of the tribes in Wisconsin. The proposed reorganization would split the State of Wisconsin in half with some of the tribes being part of an eastern district since they are part of the Great Lakes watershed and others remaining part of a midwestern district since they are in the Mississippi River watershed.

My Tribe is one of the tribes that would be part of the Great Lakes watershed district. This means we would likely be working with new people, who may take a different approach, on fee-to-trust issues. It would also mean fee-to-trust applications and appeals that are currently active may be moved to new staff, resulting in delays while the work on them starts over or is delayed while new people familiarize themselves with the application. We would also need to educate the new people working on our fee-to-trust applications about the circumstances of local government opposition and how their goal is to at least delay applications and extend the timeframes when the Tribe has to pay taxes.

Another issue is that this reorganization would likely result in more travel time and costs. The BIA at times has to do site visits to the Tribe's reservation, such as those done as part of the fee-to-trust process. Tribal officials at times visit BIA offices such as for tribal consultations, listening sessions and educational sessions. The proposed new regional office for the Great Lakes watershed, which may be in upstate New York, would be a much greater distance from our reservation than the current office in Minneapolis. It would be too far to drive and there are no direct flights. This means that there would be much more time that needs to be spent by each party traveling and travel costs would be higher.

Furthermore, separating the 11 Wisconsin tribes into 2 different regions also means that there is a much greater likelihood of inconsistency in federal treatment of the tribes that are in close proximity and a duplication of federal efforts. For example, our tribal staff are currently working with BIA staff on how to implement a Wisconsin tax law program in relation to the fee-to-trust process. State law establishes a program (the Managed Forest Law program) that provides a tax savings to landowners when the land is appropriately managed for good forest resources and is open to access by the public. The state law also contains a provision that allows land to exit the program early so that it can be held in trust for a tribe. Tribal and BIA staff have been working on how to accomplish this so that the law can be used not only by my Tribe, but by other tribes in Wisconsin. If the Wisconsin tribes were split between 2 regions, it would mean that potentially 2 tribes working with 2 different regions would be working on the same issue related to a Wisconsin law. The regions could reach different conclusion on whether and how the fee-to-trust process would work in relation to land enrolled in the tax program so that, not only is there duplicated work, but similarly situated tribes would be treated differently.

## **Conclusion**

My testimony only highlights two recent policy announcements by the federal government that will negatively affect my tribe. The impacts these decisions will have is 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.