

**Oral testimony: Chairman John Berrey, Quapaw TribeS. 550 Indian  
Probate Reform, 5/7/03  
Senate Indian Affairs**

Mr. Chairman and distinguished members of the committee thank you for the invitation to speak to you today on such a critical problem in Indian Country. My name is John Berrey, I am the Chairman if the Quapaw Tribe of Oklahoma and Vice-Chairman of The Inter-Tribal Monitoring Association. I have been asked to describe the current problems regarding Indian probate and the complex interrelationships involved in the cash, land and resource management processes administered by the Department of the Interior.

I have had the great opportunity to be part of a historic project, under the direction and guidance of Secretary, The “As Is” Business model now complete, identified in detail the current DOI Trust Business Processes. The processes that are the subject of this scientific analysis are:

- Accounting (collections, management and distribution of cash)
- Appraisals (ordering, practice, reporting)
- Beneficiary Service (Tribal and Individual contact with DOI)
- Cadastral Survey Services (identification, recording and management of land boundary information)
- Probate (case preparation, adjudication, case closing)

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- Surface Asset Management (lease development, compliance, enforcement)  
  
Timber, agriculture, commercial businesses, surface minerals
- Subsurface Management (lease development, compliance, enforcement)  
  
Oil, gas, mining
- Title (acquisitions & disposals, rights of ways, title management)

“As Is” Overview

I was the leader of the five Tribal Representatives selected by last years Tribal Task Force working with a project team with DOI process experts and contract facilitators from EDS. I traveled over two hundred days last year crossing the country interviewing nearly one thousand individuals involved in all the activity that is Indian Trust business management and documenting in detail the work that is performed at every level, every day. We interviewed employees from BIA, MMS, BLM, OTFM, OHA, Direct Service Tribes and Tribes with 638 contracts, and Self-governance Tribes.

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We interviewed every level of staff from all 12 BIA Regions, numerous BIA agencies and several Tribal Reservations. We talked to clerks, line officers, managers and directors, if an office had any activity regarding Indian Trust Management we studied it in some form. This intense project has had the following benefits:

- Established a comprehensive understanding of current Trust business operations
- Documented variances among geographic regions, and their causes (e.g., due to federal, tribal, state or local laws, treaties, court rulings, local practices)
- Identified current issues and opportunities for improvement so as to provide a basis for a “To-Be” process reengineering of the Indian Trust.

Over the decades Indian tribes have witnessed a multitude of trust reform initiatives, reorganizations, plans, meetings, summits, work groups, task forces, computer systems, software, outsourcing contracts, and other efforts to fix the problems with management of Indian trust funds. To date, none of these efforts have proven successful. The reason, we believe, is that

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we have been seeking quick fixes rather than focusing on the root of the problem. And the root of the problem is: the fractionation of title ownership is making the system impossible to manage. The General Allotment Act of 1887 was designed to destroy Tribal governments, that did not work and it is time we reverse the act and protect and restore Tribal land bases and jurisdiction.

The DOI is pretty much a land management entity and any land title and ownership information system is the most fundamental aspect of the trust system. DOI cannot accurately collect and distribute trust funds if it does not have correct information about the beneficial owners of the trust assets. This is the starting point for any effort to fix the trust system. Currently, the BIA is using as many as 67 different ownership title systems in the various Land Title Record Offices, regional offices, agencies and Tribal locations around the country, both manual and electronic. There is TAAMS, LRIS, MADS, GLADS, TFAS and several individualized spreadsheets and other software systems, the sad thing is over 30% of all agencies still use the old paper 3X5 A&E cards.

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At my agency, The Miami Agency in Miami, Oklahoma they update Title once a year. They order Pizza and the whole gang sits around and updates these little cards. Each night a little old lady carries the records back to the closet, God forbid she drops the box and our records shoot across the floor.

These systems contain overlapping and inconsistent information. The systems are largely "stand alone" in that they do not automatically reconcile the ownership information in the agency offices, in tribal records, or in the lease distribution records that are used for daily operations. Because records management standards and quality control procedures are lacking, there is no assurance that title records are accurate. These inaccuracies result in incorrect distribution of proceeds from trust resources, questions regarding the validity of trust resource transactions, and the necessity to repeatedly perform administrative procedures such as probate. Consequently, a large backlog of corrections has developed in many of the title offices, and this has compounded the delays in probate, leasing, mortgages, and other trust transactions that rely on title and ownership information. In turn, each of these delays compounds the errors in the distribution of trust funds.

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What does this mean? I like to describe what I call the Haskell effect. If a Navajo man goes away to Haskell Indian School and meets a Woman from Osage, they marry and move to Minneapolis where they adopt a couple of young children from Northern Cheyenne and they all get killed in a car wreck. Besides the obvious tragedy the added problem is the DOI has no way to know that there is land in three separate regions managed with systems that do not communicate. It creates a nearly impossible Probate case preparation nightmare.

Cleaning up the ownership information and implementing an effective title system that is integrated with the leasing and accounting systems is a primary need for the Indian trust system. However, the BIA will never be able to complete this task if Congress does not address the fractionation problem. In 1998, just five years ago, the BIA reported that it was managing just over 1 million fractionated ownership interests on trust lands in Indian country. Just last month, the BIA reported that it is now managing over 4 million ownership interests. This explosion in the number of ownership interests comes when the land passes from one generation to the

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next generation of children by the automatic operation of state intestacy laws.

The fractionation problem has already grown wildly out of control. But if Congress fails to act now to address it, it will continue to compound.

Even if we built a wonderful computerized system to keep track of all the millions of ownership interests, we would soon have to scrap it and build a newer, bigger one. In a couple of generations we could have billions of interests. How many people, how much time would it take to keep track of all of those interests?

The As-Is Study and its findings show that we need to focus our trust reform efforts on the title system. That means that Congress needs to focus on reducing fractionation, as the single most important thing in order to address trust reform:

**My recommendations would be:**

- 1) We have to respect the property rights of the individual owners. But within this framework, we have to do everything possible to encourage the consolidation of Indian land. That should be the single guiding

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principle for judging each and every provision in S. 550. Does it help us consolidate land and reduce fractionation?

- 2) The tribes are making huge efforts on consolidation. This bill needs to make sure that tribes have the tools to write their own probate codes.
- 3) Indian landowners must have the right to devise their land to whomever they want, or they must be compensated if they are not able to. The Uniform Federal In testate Code that is proposed in S. 550 could be a giant step forward to reduce fractionation but it needs focus. I would like to see us limit the in testate provisions to immediate family who are members of the tribe, and if there are no such members, then it should pass to the tribe itself.
- 4) Promote Estate Planning; provide adequate funding and training to get individuals to write wills. 95% of Indians die without a will.
- 5) Put adjudication under one roof. Create an Office of Indian Probate made up of Indian Probate Judges (IPJ's) and Attorney Decision Makers (ADM's) removing the Administrative Law Judges (ALJ'S)
- 6) Finally, and perhaps most importantly, Congress should beef up the Indian Land Consolidation Pilot Project and make it permanent.



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In closing,

I would like to pledge my assistance to the Indian Affairs Committee and its members in any issues related to the complex management of the Indian Trust, if it is fractionalization, settlement of mismanagement claims, or historical accounting, I can provide an clear science-based description and understanding of the multi-agency cash and resource management provided to Native people by the United States.

Thank you