



5 Findings and Recommendations

5.1 Introduction

The processes documented and conclusions reached by the As-Is Team were based on analysis of the information provided by the participants who attended the work sessions. At the completion of each session, updates to baseline process descriptions were developed, including baseline enhancements and variations. The results of the sessions were made available to process sponsors, Tribal experts and work session participants for review, validation and comment.

The team did not attempt to separately conduct extensive research regarding the processes or their regulatory/legal requirements. Additionally, the scope of the As-Is Business Model work did not include development of detailed alternative solutions. As a result, further analysis and consideration must be given to a number of the recommendations included in this report before decisions involving future direction can be finalized. Given the overall scale of the proposed changes and the interrelationships among the recommendations, prioritization and timing of implementation will also be required.

The templates from the work sessions contain detailed comments and suggestions from the participants at the sessions and can be found on the enclosed compact disc that contains this report. Some have become part of the findings and recommendations presented in this chapter. The remainder of the suggestions and comments should be reviewed as part of the To-Be process design.

5.1.1 Purpose

This chapter provides findings and recommendations for reengineering the Indian Trust business processes and for implementing improvements in related areas. As further discussed in Chapter 6, these findings and recommendations are primarily starting points for DOI's reengineering efforts. The To-Be effort will be a DOI-wide transformation that encompasses much more than changes to individual processes. The purpose of the To-Be transformation is to look for breakthrough change – change of such magnitude that previous standards for process time, efficiency, effectiveness, customer service, etc. are surpassed and new strategic goals and objectives are made possible. During the remodeling, organization-level, cross-process change as well as detailed, process-specific change will be required.

5.1.2 Approach

As a basis for developing the findings, the criteria used were those established by the Department of the Interior in its statements of Trust mission, principles, strategic goals and objectives, and its business plan. The *Comprehensive Trust Management Plan*, in particular, identifies a number of specific outcomes that DOI aims to achieve for the Indian Trust (itemized earlier in Chapter 1) and the extent to which current efforts meet these objectives. In addition, relevant aspects of OMB Circular A-130 (also described in Chapter 1), and the industry standards and performance measures collected, as detailed in Chapter 3, were considered.

The **findings** are focused on important aspects of the Trust that the Department can change, and which are present in multiple regions and BIA agencies. Chapter 4 identified some significant



issues that are present at individual locations, and those issues are included in this report as variances. These variances are not revisited in this chapter. In general, a “finding” is considered an aspect of current operations which is of high importance, is substantially within DOI’s ability to control or influence, and for which there were multiple confirmations during the work sessions.

The **recommendations** address findings and issues that were identified primarily during the work sessions and are divided into two categories: **quick hit recommendations** that could be put in place within six months and **longer term recommendations** that could (1) require more analysis, research and definition before they are implemented or (2) be starting points for the To-Be process work.

The findings and recommendations are divided into a Cross-Process section, those which affect two or more of the eight processes, and a Process-Specific section, one section for each of the eight core Trust processes.

In addition to the findings and recommendations contained in this chapter, a summary of the **observations** that were made while conducting the work sessions is included. These observations are not accompanied by associated detail and recommendations; however, they should be taken into consideration when formulating and implementing the To-Be processes.

5.2 Cross-Process Findings and Recommendations

5.2.1 Enterprise-wide Management

In the report entitled *DOI Trust Reform, Final Report and Roadmap*, a model was presented that identifies the major elements that a large-scale organization must successfully address to transform itself into an effective, modern enterprise. As illustrated in **Figure 5.2-1**, a combination of strategy, process, technology and organizational factors must be considered and integrated.

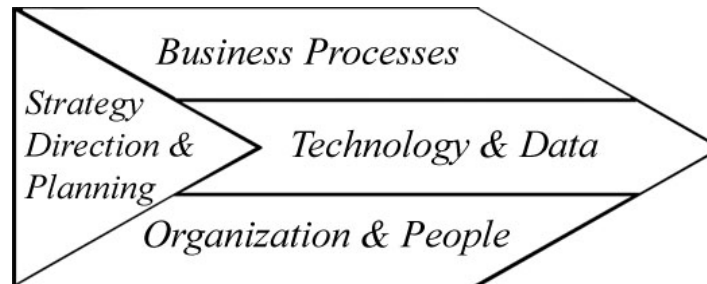


Figure 5.2- 1 Model for Successful Transformation

The scope of the As-Is Model is heavily focused on the business process dimension. However, business processes are related to the other elements, which all bear on the effectiveness of the Indian Trust. Because of this, highlights of the issues encountered in these and other critical areas are provided for consideration below, but are not accompanied by detailed findings and recommendations.

5.2.1.1 Strategy, Direction & Planning

As illustrated in **Figure 5.2-1**, strategy and planning should drive the other key areas of organizational action. Issues that were identified related to the strategy, direction and planning of the Indian Trust are:

- a) Need for the implementation of a strategy for Trust Reform: The need for a Trust Reform strategy was noted in the “Roadmap” section of the *DOI Trust Reform, Final Report and Roadmap*. DOI has now developed a strategy, and should proceed with implementation. The As-Is Team confirmed that this strategic direction is needed to facilitate planning, set priorities and communicate goals and objectives to both DOI service delivery people and beneficiaries.
- b) Need for planning that supports integrated service delivery and fosters proactive, rather than reactive, services.

A combination of factors has limited DOI’s ability to effectively plan for coordinated efforts to improve services. These have included the lack of an overall strategy, organizational overlaps (mentioned further below), a decentralized operating approach, workloads that exceed the ability of current operations to meet, and a series of demands on senior Indian Trust leaders related to litigation



and data system security problems. In addition, prior to development of the As-Is model, Trust work flows and processes had not been clearly charted nor their associated organizational roles documented. This made inter-process and inter-organizational planning difficult.

The Department has taken several steps to address some of these strategic planning and direction deficiencies. DOI has issued the final draft of the *Comprehensive Trust Management Plan*, which provides specific goals and objectives in six key areas and ties higher-level strategic aims to more tactical objectives. The Plan also lays out steps and requirements for implementing widespread change and improvement to Trust activities. These represent important first steps in establishing improved direction and planning for the Trust.

5.2.1.2 Organization

In the *DOI Trust Reform, Final Report and Roadmap*, a number of organizational problems were noted. These included the absence of a single executive sponsor or overall “owner” who is accountable for the Trust, conflict among bureaus and units within DOI, and at times, overlapping and inconsistent responsibilities. These problems again surfaced during the As-Is Team’s work sessions. In addition to those mentioned above, the following organizational issues were noted:

- a) Lack of end-to-end accountability and responsibility for individual Trust processes
- b) Absence of clear authority to make changes to address process problems
- c) Inconsistent delegation of authority to field units
- d) Where organizational overlaps exist, differences in organizational regulations and policies governing the execution of processes, resulting in inconsistent service characteristics (objectives, time lines, information requirements, etc.)

Early in 2002, DOI announced an organizational realignment for Trust responsibilities that was aimed at addressing several of these problems. It subsequently held a series of joint DOI-Tribal Task Force meetings to discuss organizational options and Tribal concerns. Mutual agreement on a new structure was not reached, but common ground was found on a number of issues. In early December 2002, the Department announced a revised organizational approach. Among the changes were steps intended to:

- a) Establish clear accountability for Trust fiduciary responsibilities
- b) Clarify and streamline individual organizational roles and duties, phasing out some units and combining others
- c) Provide beneficiaries with improved service; e.g., through creation of a dedicated call center capability
- d) Strengthen project management and integration

5.2.1.3 Training and Resource Management

Human resource issues, such as personnel training and other “universal support” functions, were considered outside the scope of the As-Is Team’s work. Additionally, training and resource management issues were identified by the court as a breach of Trust duty owed beneficiaries in *Cobell v Babbitt*, and were the subject of a prior review-- HLIP 10 in the *DOI Trust Reform, Final Report and Roadmap*. However, because of their importance, the following issues should also be taken into consideration:



- a) There is a need for improved planning and execution in the area of filling vacancies and replacing retirees. As with other federal agencies, the Indian Trust field personnel have a high percentage of staff who are eligible for retirement, and there are already a significant number of vacancies.
- b) There is a lack of training available in several areas that require expertise, such as information technology, customer relationship management and Trust technical subject matter. In many cases, the current staff has not been provided adequate training and do not have the skills needed to perform their work with maximum effectiveness and efficiency. A more detailed recommendation about Trust Management courses that should be available to staff can be found in the *DOI Trust Reform, Final Report and Roadmap*, HLIP 10, Section 2.3.2 - Develop Advanced Trust Management Courses.

The new organizational plan envisions the creation of several important new roles; e.g., Trust officers and call center service specialists. Plans should be developed for recruitment and training of these personnel.

5.2.1.4 Enterprise Technical and Business Architecture

While the As-Is Team did not conduct a technical review of the Trust's information technology environment, a review of this area was performed earlier and discussed in the *DOI Trust Reform, Final Report and Roadmap*. However, due to the critical role that data and computer systems play in Trust activities, one item is highlighted below and other computer system and technology related findings appear elsewhere in this report.

A key recommendation of the *DOI Trust Reform, Final Report and Roadmap* was that DOI develop a comprehensive enterprise architecture. It was noted that there had been an effort to develop a technology architecture, but that it did not address some critical areas, such as network capacity, structure and security issues. The architecture was also not reflective of the processes in place. The As-Is Team's work confirmed that there continues to be a need for an overall architecture and development of technology standards, which apply to IT infrastructure, hardware and software; e.g., systems, applications and data stores. DOI has recognized this need and has established DOI-wide, and BIA/OST-specific working groups to address the issue. However, due to the critical nature of the decisions required, DOI should consider establishing one full-time group to define the architecture rather than continuing with two working groups. No matter who is charged with the task at hand, DOI should ensure that the efforts result in a common, integrated DOI architecture.

5.2.2 Commercial Trust to Indian Trust Comparison

Chapter 3 presents a comparison of the Indian Trust to the structure and operation of commercial trusts. In many respects, there are close parallels between commercial trusts and the Indian Trust. The two have the same basic administration functions and transactional requirements, and have similar fiduciary responsibilities, although there are differences in the way these are executed. The analysis highlights inherent differences between the Indian Trust and commercial Trust operations. A commercial trust is primarily governed by the laws and guidelines of the Office of the Comptroller of the Currency, whereas Indian Trust responsibilities are less succinctly defined. The Indian Trust must comply with numerous federal, state and Tribal laws, regulations, treaty obligations and case law. These laws and regulations add a significant level of complexity to Indian Trust administration. In



addition, the federal government is working with Tribes to encourage Tribal self-governance, including Tribal operation of Trust management functions (except those considered inherently federal).

Furthermore, the scope of the Indian Trust, in terms of acreage, revenues and the number of owner-interests, is also exponentially larger than even the largest private land-based Trust operation in America. The Bank of America Trust department, as an example of one of the country's largest land-based Trust operations, estimates that they manage approximately two million acres of Trust land, compared to the Indian Trust's 56 million acres. The widely recognized problem of fractionated interests of Indian Trust lands just compounds the complexity of the management challenge. Another difference with the Indian Trust is the small amount of money that passes through many of the accounts.

However, in many other respects there are close parallels between commercial trusts and the Indian Trust. The two have the same basic functions and transactional requirements, and have similar fiduciary responsibilities. However, there are many differences in the way they are implemented. Industry standards have been used to highlight the differences in a standard commercial trust and the Indian Trust, which is governed by statute. The following findings and recommendations take into account that usual industry standards are modified by statute when applicable to the Indian Trust. Some of the most important differences are summarized in **Table 5.2-1**.

A general finding is that current Indian Trust operations differ significantly from a commercial trust environment. Indian Trust processes operate within silos, with many steps cycling back from one area to another to obtain needed additional information or further action. This was depicted in Chapter 4, and illustrates the very large number of flows, loops and sequences that are now part of the Trust activities. This situation has developed in large part as a result of the decentralized procedures and systems, which have evolved "piecemeal" over time, from organizational fragmentation, and from absence of Trust-wide planning. In contrast, commercial trusts (including those with substantial real estate holdings) have a much smoother transactional flow, even though it depends upon many different parties to execute required title and realty activities.

With reference to specific functional areas, the table below summarizes the service delivery differences between the Indian Trust and commercial models.



Table 5.2- 1 Highlights of Commercial and Indian Trust Service Delivery Differences

Commercial Trust Characteristics	Indian Trust Characteristics
Periodic planning for and review of asset use. Frequent appraisals to assure adequate return on value	With some exceptions, very little asset planning is done with most leases being continuations of prior land use. Appraisals not always done to support new leases, and very seldom done to consider alternative use
Extensive performance metrics in place to monitor return on assets, service to customers, costs, transaction quality, and other areas. Industry norms used	Very few consistent metrics applied. Locally developed performance measures which are usually not compared to other geographic areas or industry norms
Gradation of services based on asset value, with individualized service to higher asset value customers	No distinctions in service level are made, although there is wide variation in beneficiary holdings, asset values, information needs, etc.
Proactive communications with beneficiaries. Single point of contact for most problem resolution	Mostly respond to inquiries rather than initiating contact relative to delivery of services. Typically, many different organizations must be contacted by beneficiaries to resolve different problems
Centralization and uniformity of records, information and financial systems, with decentralized access	Wide variation of record keeping and information sources
Employ imaging of incoming documents and digitization, utilize a core data base and integrated information technology	Very little uniformity or integration of data. No significant amount of imaging of current records
Considerable use of outside parties to execute significant aspects of trust activities; e.g., leasing, appraisals, title recordation	Heavy reliance on in-house personnel to perform most tasks

Within the confines of its special mission and responsibilities, the Indian Trust should move broadly to adopt commercial trust characteristics for many of its management and service delivery activities. This overall recommendation will be further amplified in the sections that follow.

5.2.3 Cross Process Findings

The findings in this chapter focus heavily on needs for improvement. It is important to note that the As-Is Team found DOI staff to be hard working and typically performing as well as they can within the current environment. In many cases, it appears that the personnel available are inadequate to address the current workload. However, because there are major opportunities to streamline workflows, reprioritize resources and improve the speed and effectiveness of the work being performed, it is difficult to draw overall conclusions about the need for additional personnel.



The team was also able to find several instances where, either at the BIA agency or regional level, very effective practices had been put in place. These were sought out for possible broader application, and will be referred to below.

The following are findings, which span multiple processes. These will at times receive more specific coverage within the Process-specific finding discussions in Section 5.3 – Surface Asset Management Findings and Recommendations below.

5.2.3.1 Broad Trust Management and Asset Stewardship

Finding 1: The Trust has not been focused on the full and consistent identification, tracking and management of its assets and finances.

The Trust lacks a rigorous focus on and supporting mechanisms for full identification of all Trust lands, as well as consistently associating those properties with realty activities, and a thorough system of assuring that appropriate payments are made to beneficiaries. Instead, there are localized and incomplete approaches to identifying and tracking of land and its use. Problems were identified with the ownership identification; e.g., location and tracking of Public Domain Allotments (PDAs), individual Indian allotments in Alaska, and certain restricted Trust lands.

During workshops in some locations, participants stated that there may be a significant number of allotments which are not leased or permitted. One example of this is PDA land, granted to individual beneficiaries out of public fee-interest property early in the 20th century. Most of these tracts are relatively small, in the vicinity of 10-160 acres, widely scattered in location, many of them off-reservation. These tracts are not easily identifiable and often are difficult to locate. Title to these tracts is sometimes unclear. Many owner-interests are unaware of their rights or the location of their land. Those who are aware, frequently report the land as used by third parties in trespass.

Requirements for manpower and time to manage these and other smaller, disconnected parcels exceeds current resource capabilities. BIA land program and realty personnel generally do not proactively perform activities related to these allotments, but respond to the best of their capabilities upon request. Most frequently this is triggered by complaints, notification of trespass, or a contact from another governmental agency; e.g., HUD contacting a nearby BIA office regarding an individual who initiated financing and building a personal home on a tract claimed as an allotment, with lack of clear, 100%-owned title. Frequently, such complaints trigger research that result in identifying small, landlocked allotment(s) within the bounds of rangeland or farmland being used by others without the consent or compensation to allottee-interests. This use may be without knowledge or harmful intent.

Finding 2: Land management and planning is frequently reactive rather than proactive. Approval processes for proposed changes in land use are slow and can discourage outside parties from presenting proposals for Trust land use.

With some exceptions, there appears to be little overall planning as to how individual allotments or Tribal Trust lands should be used going forward, although substantial planning efforts are made in land being forested. The water grant program also has a clear planning process associated with it.



The general goals of the Indian Trust stewardship of surface assets are to support sustainable use consistent with obligations and good environmental practices, minimize the amount of idle land to prevent wastage, and obtain a fair market value for its use.

In many cases, decisions on land usage are often only made as a result of an event occurring such as the termination of a lease, with the result being keeping the historical land use, and little consideration given to other possible uses. In contrast, both the commercial trust industry standards and some of the Tribes participating in the work sessions engage in regular, careful large scale planning for their lands. In these cases, an overall plan is established which identifies specific future land use intentions; e.g., for residences, commercial development, mining, recreation, reserves of sacred land, etc. Reviews are also made of eligible land to consider management alternatives that might produce more revenue and/or improve its condition. For example, some privately held ranches have experienced higher per acre returns and environmental improvement by converting portions to hunting and wildlife observation status.

There are some Tribes who have shown initiative in funding and developing their own comprehensive land use plans. In several of these cases, there appears to be a noticeable improvement in the coordination between BIA and the Tribe in fulfilling the land use objectives defined by the Tribe. In many cases, this may include alternative land uses, commercial development, zoning for home sites, criteria for limitations on development or utilization levels, and reserves for cultural and social use. Notable examples of this are the Jicarilla Apache Tribe, Isleta Pueblo, Sandia Pueblo, Acoma Pueblo, White Mountain Apache Tribe, Salt River Pima-Maricopa Indian Community, Yakama Nation, Hoopa Valley Tribal Council, and Agua Caliente Band of Cahuilla Indians.

Land development for mining, commercial building erection, and other high profile, but potentially appropriate, use is a difficult matter for both individual Indian and Tribal Trust land, due to the presence of considerable legal, regulatory and procedural obstacles which must be overcome. This is typified by very slow decision making and approval cycles that result in a perception by businesses that the leasing of Indian Trust lands is more cumbersome than other federal lands, and considerably more cumbersome than commercial properties. These delays can result in abandonment of the opportunity by a commercial concern and permanent loss of revenue to the beneficiaries, for example when they have a specific time horizon for capital development investments. Adding to this problem is the lengthy lease approval requirement for some tribes. Some Tribes have one or two committees, which must approve a lease while other Tribes have many committees, which must review and approve a single lease.

A contributing problem is the complexity and time-consuming requirements of federal laws and regulations for Indian Trust land use. These are discussed in more detail in specific process area discussions, further below.

Finding 3: Procedures for funds collection and the preparation of distribution advice vary widely, and are time consuming and error prone.

BIA Agencies and Field Offices are the point of receipt for a majority of funds related to land use. Two separate and distinct collection processes take place. Pre-lease collections are part of both the selection of the lessee or permittee step, and the approval of the lease or permit. These are non-trust



funds until the lease is perfected. Lease collection funds are Trust funds and are distributed to the owners of the property.

Only upon perfection of a lease is there adequate information to determine exactly which funds need to be returned to applicants, which funds need to be forwarded to other parties, such as the Tribe, a contracted service provider or to Federal Finance System (FFS) for cash deposits, and which funds are Trust funds and need to be forwarded to OST/OTFM for distribution to the beneficiaries. OST/OTFM policy requires that Trust funds need to be deposited within 24 hours and a distribution advice prepared. The advice is prepared to define the apportionment of funds to the various owner interests in the property. The calculations to complete the distribution advice are not well-understood or standardized in many of the offices that must prepare them.

Policy also requires non-Trust funds to be deposited with the FFS, then when a final disbursement destination or conversion to Trust status is determined, a request for the transfer from FFS to the appropriate destination is required. Many of the specific procedures, guidelines regarding suspense accounts and FFS deposits have changed several times over the last 18 months, resulting in confusion, lack of adherence, and widely inconsistent application in the various BIA offices. Many BIA offices find solutions pragmatic for their location, information access, and funds transfer cycle times. These offices frequently either hold funds until determinations are complete, or deposit them to special deposit accounts, or to local bank demand deposit accounts. As a result, large balances of funds accumulate in various accounts. These accumulations then require lengthy and complex reconciliation to ascertain the original sources and appropriate destinations of the balances, delaying timely and accurate disbursement. While there is a current initiative underway to assist in reconciling and clearing these accounts, new solutions and efforts are still required to minimize or prevent these impacts in the future.

Upon perfection of the lease or permit, or upon the annual receipt of rental payments, a distribution advice is prepared to define the apportionment of the funds to the various owner-interests in the relevant property. The calculations required to complete the distribution advice are not well understood or standardized for all the offices which prepare them. Especially difficult is the calculation for apportionment of the revenue received on a lease or permit. For example, a number of tracts of land have been aggregated into a single Range Unit or Farm Unit in order to increase the commercial appeal and rental value of the land. Revenue is received at this aggregated level. Some agencies base the apportionment calculation upon acreage, dividing the revenue by the number of acres to develop a "blended rate" and this rate is then multiplied by the acreage and percentage of ownership-interest to define the amount owed each beneficiary. Some agencies base the apportionment calculation based on the productivity of each specific tract. This is relatively more straightforward for Range Units, which usually have productivity estimated in animal unit months (AUM), but is quite problematic for farm/pasture leases where no algorithms for productivity exist across different crop types and animal pasturing. Other calculation inconsistencies exist in addressing the existence of non-Trust interests in such unitized land use contracts; e.g., fee interests, BLM land, state land.

Various sources of ownership information are used to develop the distribution advice. Upon submission to OST/OTFM for distribution, many of these advices are rejected for data inconsistencies. Causal factors are many, but some examples are:

- a) Ownership interests in a tract do not total to 100%



- b) Rounding errors indicate individual distribution amounts which do not sum to the total funds available for the property
- c) Differences exist in the calculated fund balance available for distribution on the property, due to interest applied by OST/OTFM, versus the interest applied by the BIA office preparing the advice
- d) Differences in names or census numbers for the individual beneficiaries between BIA records and advice, versus the OST/OTFM records in the TFAS system.

Automated systems do not always contain all of the lease term distribution information and also do not contain the effective and termination dates of leases. This leads to inconsistent revenue collection and delays in distribution of monies to beneficiaries.

The lack of an accounts receivable system also complicates the task of performing cash projections, which are essential in making investment decisions and ensuring that cash is available to meet distribution needs.

Finding 4: The monitoring of direct payments from lessees to beneficiaries has raised significant concerns.

Direct payments are being made from the lessee or permittee directly to the beneficiary for many different types of land use contracts. Although this mechanism provides a way for beneficiaries to receive payments faster by removing DOI as an intermediary, the current processes being used have often significantly diminished DOI's responsibility to assure that proper payment is being made and that the right beneficiaries are receiving the amounts to which they are entitled. This is particularly true in cases where variable payments should be made, where penalties or other fees should be added, or where there are multiple owners of the same tract. Many times beneficiaries have complained to DOI that payments have not been received or have been received late and DOI must then follow up to determine the cause of the complaint. It is not clear as to where the DOI's fiduciary responsibility starts and ends with direct payments.

A wide variety of policies and procedures are being used at regional and local offices to accommodate direct payments. In practice, some BIA Agencies do not allow Direct Pay, some allow it but then require all interests in the property to be paid by Direct Pay, and some allow individual landowner interests to be paid directly or through DOI or through the Tribe.

Each of these options presents difficulties, and can result in incorrect amounts being paid, and not all the correct beneficiaries being paid. For example, the ownership list is usually provided to the lessee or permittee before the land use contract is perfected, as part of the consent process. It is highly unusual for any update to be provided to the lessee/permittee. Given high levels of fractionation on allotted lands, it is relatively common to expect some ownership interest to change, either through disposition, heirship, etc. Lack of notifying the operator of ownership-interest updates results in continued payment based on outdated information.

Where individual owners can individually choose Direct Pay, combined with the complex calculation issues, the results are often varying or incorrect payment calculations being used by the operators. Similarly, some land use contracts require revisions to rental amounts; e.g., based upon commodity price changes relevant to the type of land use, or periodic updates if the contract is a longer duration



lease such as for orchards or vineyards. These rental payment revisions are not consistently accompanied by update to the operator for the new distribution amounts, or calculation change requirements.

In addition to the difficulties described above in implementing Direct Pay, many locations do not require proof of such payment, and hence, do not track fulfillment of the receivables to ensure the beneficiaries are actually getting paid, or paid the correct amounts in a timely manner.

Finding 5: There is no comprehensive approach to monitoring and reporting land condition and usage. Enforcing compliance on land use contracts is often inconsistent and inadequate.

DOI has the responsibility to protect Trust assets, and address poor use practices and land use contract violations, as part of its fiduciary obligation. Three of the Trust Principles documented in the 2000 DOI Departmental Manual address elements of land protection:

- a) Protect and preserve Indian Trust assets from loss, damage, unlawful alienation, waste and depletion.
- b) Enforce the terms of all leases or other agreements that provide for the use of Trust assets, and take appropriate steps to remedy trespass on Trust or restricted lands.
- c) Protect treaty-based fishing, hunting, gathering and similar rights of access and resource use on traditional tribal paths.

As part of land use planning, consideration should be given to whether land is being over or under utilized and which leases are coming due. This is important in determining whether land needs to be reclaimed or possibly used for other purposes.

Idle land presents a singular concern. It can be subject to intrusion from invasive flora and fauna, as well as trespass, dumping or other unsound uses. DOI estimates that roughly 12 of the Trust's 56 million acres are idle. However, it should be noted that some of this idle land is intentionally not leased; for example, sacred land, recreation land, land laid fallow to regenerate nutrients and land left idle at the landowner's specific request.

BIA and Tribal land program and realty staff commonly focus on non-payment or delinquency of annual rentals, with monitoring and enforcement of other forms of "loss, damage, waste and depletion" being more difficult. The majority of the time and staffing allocation at local offices is for permit and lease administration, reporting, funds management and reconciliation. Staffing levels for Range and Agricultural Leasing programs have been reduced from levels in the 1970's and 1980's, heavily impacting land monitoring, operator consultation, and land condition reporting.

As a result of low levels of compliance monitoring, high levels of lease or permit violations are experienced in some areas. This takes many forms. Agricultural lease examples include noncompliance with crop rotation schedules, weed control requirements, or pasturing more animals than allowed. Range grazing permit examples are overstocking, more animals than the rated animal carrying capacity of the land, lack of fence maintenance, erection of fencing not allowed or approved; e.g., precluding other adjacent landowner or operators from having access to public water, trespass, and not adhering to season of use agreements. Where noncompliance exists, BIA or Tribal resources attempt to work with the operator to encourage better practices, but escalation procedures and



enforcement actions are problematic and not always well supported due to social and cultural influences.

For idle lands (lands not under lease or permit), monitoring is even less consistent. It is common to perform monitoring inspections on only 0.5%-10% of idle tracts each year. Trespass, uncompensated Rights of Way, dumping, use of All-Terrain Vehicles driven on Indian lands, and intrusion of invasive flora have been a problem on idle lands, and can result in the tracts no longer being commercially rentable or usable (for example, there are estimated to be thousands of illegal dumps on the Crow Reservation).

Many BIA agencies or reservations reported that monitoring inspections that do occur find high noncompliance rates on leased or permitted tracts, and equal or worse situations on idle lands.

Where compliance violations *are* found, securing effective enforcement can be a problem. BIA and Tribal realty staff has recourse through 25 CFR Part 12, addressing Indian Country Law Enforcement in general; 25 CFR 12.21 specifically provides for BIA Law Enforcement to solicit help from other federal, state, local or Tribal law enforcement officers in support of criminal investigations, including federal hunting and fishing regulation violations. However, in practice, other law enforcement organizations have different priorities, and many have limitation criteria to trigger support, such as the Pacific Region public law enforcement requiring evidence of greater than \$50,000 in damages before they can assist in support of enforcement. Frequently, these limitations and priority conflicts result in lack of practical, timely support to prevent the damage to the land.

Finding 6: There are few performance measures associated with the execution of core Trust tasks and accomplishments. As a result, certain management responsibilities are significantly hindered.

As noted in **Table 5.2-1**, DOI has very few consistent performance measures that can be used to evaluate the efficiency and effectiveness of the delivery of Trust services. Many of the existing measures are locally developed and are usually not compared to other geographic areas or commercial norms. The lack of performance measures results in a deficiency in management information that in turn hinders the execution of some management responsibilities. The following are examples of inadequate performance measures and management information:

- a) There is no accurate inventory of inactive acreage available for lease.
- b) Income received for specific Trust land uses in comparison to similar commercial uses cannot be made to assure fair market value return.
- c) Accounts receivable status to pinpoint recurring payment problems in comparison to commercial norms cannot be made.
- d) Transaction processing backlogs, while often monitored locally, are not uniformly recorded and do not form part of management's information inventory.

Additional findings are documented in **Table 3.3-3 DOI Executive Interview Results**. For further discussion of process-specific performance metrics, see [Section 5.3.3 - Beneficiary Services](#), [Section 5.3.4 - Appraisal](#) and [Section 5.3.5.3- Long-Term Leasing](#).



Broad Trust Management and Asset Stewardship Quick Hit Recommendations

Broad Trust Quick Hits

There are a series of short-term improvements that the Department can launch that will make a significant positive impact on operations and service in the “Broad Trust Stewardship” area. Such initiatives can impact the accuracy and timeliness of transaction handling, reduce costs and improve responsiveness to beneficiaries (some of these recommendations are explained in more detail later in this report).

- 1. Reduce payment errors and personnel time consumed with calculations and reconciliations by devising and disseminating a common set of standards and calculations for beneficiary payments.** Refine policies and the Inter-Agency Procedures Handbook to include standard algorithms and conduct training sessions as appropriate. Identify, fund, and manage systems maintenance projects to implement these new standards, particularly for those offices and locations relying on IRMS or MAD to perform this calculation. For other locations that rely on local systems, spreadsheets or manual calculations, devise a spreadsheet with appropriate input areas, and protected calculation algorithms, then deploy and train resources to use this standard method of apportioning land use revenue.
- 2. Reduce staff time and improve interactions with beneficiaries by developing consistent processes and tools for obtaining consent from fractionated interests in allotted lands.** Approaches for this currently vary from agency to agency. Some locations require up to three separate notifications and responses from tract owners to complete approval of a lease or permit. In these cases, each interaction can involve separately obtaining ownership-interest information. Simplification and standardization of this process could reduce workload and present the same consent experience for those beneficiaries who have ownership-interest in more than one tract.
- 3. Simplify and clarify beneficiary account statements.** Beneficiaries are having trouble interpreting and understanding their account statements, oil and gas statements and other Trust-related reports. They find the current codes confusing and consequently do not understand what money is being received from specific Trust assets. An interim working group, with beneficiary representation, should be assembled to simplify the statements and make them more useful.
- 4. Make approved manuals and commonly used forms available on the Internet.** Many tribes and some reasonable number of IIM beneficiaries would be able to use the forms without the delay and cost of either sending them by mail or requiring a personal visit to a local office. In addition, DOI field staff itself would benefit from knowing, and being able to quickly access, approved procedures and work aids; e.g., legal terms, calculation tables, etc.
- 5. Provide a single, high quality beneficiary inquiry tracking system, available to all offices.** As described later in this report, there are several systems now being used in the field that could serve as the set from which one was selected and then provided to all offices. A brief analysis of these tracking systems to determine the one best suited for national use could quickly be accomplished. This would eliminate current manual, inefficient processes that do not assure inquiry follow-up and tracking. A data capture system “backend” will need to be developed to collect performance measurement metrics and present them in a meaningful manner.



In addition to these improvements, there are some major opportunities to reduce effort in low value activities and refocus these resources on other more pressing needs. These include:

6. **Eliminate duplicate title maintenance activities and shift personnel to higher value efforts.** As detailed below, LTRO/TSOs have taken up the practice of recording leases to land that are also recorded in local realty systems. The expected need for this; i.e., integration of title and realty records into a single system, has not occurred. By no longer maintaining leases and permits as legal encumbrances on title the large current LTRO/TSO title backlogs should be eliminated. Legal title should show only true encumbrances e.g., mortgage liens and Rights of Way (ROWs).
7. **Amend current Probate regulations to be consistent with state probate codes that permit summary distribution of land and monies for small estates.** Currently DOI spends extensive resources and time to probate many small estates, and a large backlog has developed. Streamlining these regulations will not only eliminate situations where the cost of the probate far exceeds the resources being transferred, but would also give all affected beneficiaries access to their assets much more rapidly.
8. **Reduce appraisal backlogs by establishing better criteria for when appraisals need to be conducted.** Currently, every business transaction involving Trust lands is required to have an associated appraisal. However, appraisals are of little value when re-leasing of land for the same purpose, or when charging a \$1 per year rental fee for residential use of Tribal land. No longer requiring appraisals in such cases will focus attention on reducing backlogs and on land use planning.
9. **Utilize the opportunities available in the Data Quality and Integrity initiative to test technologies that can improve data accuracy, speed data cleansing and serve as a pilot for longer term improvements to field office operations.** The separate but related Data Quality and Integrity initiative planned for the summer of 2003 has both the right timing and scale to serve as “laboratories” for testing the efficacy of technologies such as imaging, work flow tools and automated data reconciliation. Once validated, such technologies can have a powerful impact on both the remainder of the Data Quality and Integrity sites as well as being able to be migrated to other field office operational use.

Broad Trust Management and Asset Stewardship Longer Term Recommendations

1. **Create comprehensive land ownership, location and use inventories.**

Perform a short-term study to gather adequate information to better define the magnitude of the small parcel allotment problems, including individual Alaska Native tracts, certain restricted Trust lands and PDAs.

This effort would also recommend cost effective ways to address the need for capturing ownership, location and current use information of them. An approach should be considered to identify regions with small parcel allotment problems for a sample analysis. Anecdotal information gathered during the As-Is project indicate Eastern Oklahoma, Great Plains, Northwest, Pacific, and Rocky Mountain might be the best candidate regions for such analysis. Further recommendations and discussion of related issues are provided in Section 5.3.8 - Cadastral Survey Services Findings & Recommendations.



2. **Establish a land tracking capability and provide BIA and Tribal leadership a summary of what land is being effectively managed and operated, and where problems or exceptions require greater attention.**

If a management tool such as a “Land Management Dashboard” provided access to land tracking data, DOI and Tribal leadership would have the information necessary to focus attention, funds, or resources where they are most needed. A dashboard could also provide a basis for more effective land management planning. The reporting could be summarized into geographic presentations with quickly identifiable color schemes delineating the type and severity of the problem to be addressed. For example, one view of the information could focus on land utilization; another on revenue collection such as dollars in suspense accounts, and dollars or days delinquent in receivables; and another view for compliance issues. Beyond land ownership and use, DOI should establish clear and measurable service levels for core Trust activities, based on beneficiary needs and the goals operationally defined in the business plan.

3. **Establish clear and measurable service levels.**

The service levels should be based on beneficiary needs, and the goals described in the *Comprehensive Trust Management Plan*. A performance-reporting dashboard that pinpoints status, trends and issues related to accomplishment should be introduced to facilitate visibility into progress and aid management oversight of key activities. See [Section 3.3.5 – Conclusions](#) for further discussion.

4. **Develop and implement a land use compliance and enforcement strategy.**

The availability of a land use reporting and tracking capability will aid in compliance efforts. In the shorter term, DOI should conduct an in-depth assessment to define a quantified scope of the compliance problem and develop options and costs regarding the solution. In particular, two specific approaches should be included in the assessment. First, on-site inspections should be conducted across a representative set of reservations including idle land and each major type of land use; e.g., forestry, grazing, farm/pasture. This assessment should also document the level and issues of contractual noncompliance as well as poor land use (or disuse). Second, an audit should be performed of previously performed monitoring inspections, and assess the resolution, escalation, and enforcement which followed. The use of staff now associated with redundant lease recordation is recommended for use in this area, given that they already have Trust land ownership identification experience.

Once the magnitude of the problem has been determined, a compliance strategy could then be developed which addresses major problem types and geographic areas, as well as establishing guidelines, standards and reporting requirements for all the Trust. It should include considerations of options for enforcement; e.g., dedicated BIA teams, partial use of outside contractors, use of technologies such as aerial photography, and investigation of other techniques beyond traditional physical inspections. In developing alternatives, limited use of fees could be considered, either as part of each land use contract for monitoring purposes, or to provide an incentive to establish ownership of possible Trust lands which are not now tracked or managed.

Statutory and regulatory authority should be reviewed and enhancements considered with regard to specific land protection and lease compliance actions to be taken by BIA realty staff. Similar



recommendations are described in more detail in Section 5.3.5.3 - Long-Term Leasing Findings and Recommendations.

5. Take a more active DOI leadership role in comprehensive land use planning, working with the Tribes and beneficiaries to establish effective plans in line with their interests.

DOI should work to streamline land use planning development and approval processes. This is particularly needed for large blocks of land where there is no robust Tribal planning process in place, and where alternative land use considerations appear ready for analysis. DOI can utilize land planning practices adapted from Tribes, which have successfully implemented such planning, as well as commercial trust models. Models for this activity include the Salt River Pima-Maricopa Indian Community, Yakama Nation, Agua Caliente Band of Cahuilla Indians, and Hoopa Valley Tribal Council.

The Department's goal should be to develop reservation-wide (Tribal and allotted) land use plans, including commercial, residential, agricultural, range and subsurface leasing usage. These plans should be aligned with Tribal economic development strategies, HUD initiatives, and decisions made by Tribal Land Development Committees. DOI should work with Tribal zoning authorities to integrate their plans, as well as with beneficiaries to collaborate on proactive, long-term leasing activities. Acquisitions, exchanges and other asset management activities should also be coordinated with the comprehensive land use plans. Budgets should be established within BIA for land development activities for the most valuable real estate, perhaps increasing long-term leasing administration fees to recover investments for proactive planning efforts. For selected properties, commercial leasing feasibility studies should be conducted. Necessary Rights of Way and beneficiary consent should be pursued to properly proceed with intended land use activities.

To address IIM concerns, actively pursue a council or committee of IIM account holders representing allotment-interests, and DOI representatives, to provide input and guidance in developing and monitoring ongoing management and oversight activities for these allotments. It is likely that a new approach in both process and organization will need to be designed to protect owner-interests and provide greater land use management, monitoring, and reporting for IIM account holders. Current business processes and organizational structures do not adequately support the characteristics of this type of land base.

DOI should work with the Tribes and other federal agencies to streamline the land development decision and approval leasing process to become more competitive with private, state and other federal lands. In particular, some expedited processes should be designed for situations where a proposed commercial development has a high potential return to beneficiaries and it is in conformance with approved land use plans.

6. Implement a leasing system that will support billing, accounts receivable, collection and pre-lease receipts.

The system should provide for sufficient information to be captured as to the lease terms; e.g., effective and termination dates of the lease and schedule of payments due, to allow contract monitoring and enforcement and forecasting. The system should support billing and collection by various land types; e.g., forestry, grazing, farm/pasture and cash receipt; e.g., lockbox and



management reporting. Information must be captured in this system to include origin of the funds and the specific tracts/land uses that generated the funds.

7. If Direct Pay is continued, look at options to improve the accountability of payments.

One option could require a notice be given to the allottee/lessor at the time of lease approval that if the lessor intends to collect the revenue directly, that he/she is responsible for the accounting. The DOI would take action only when notified by the lessor that the lease is not being performed.

A second option could be the initiation of legislation allowing for self-directed trusts with the beneficiary having virtual control over his/her property and BIA simply holding the legal title to the land to protect it from third parties and taxes.

A third option may be for a provision to be made in the lease that the lessee provides proof to DOI that payments were made to the beneficiary. Procedures could be developed that support tracking these payments and produce an accounting. The use of electronic payment and notification would help to ease the administrative costs for both the DOI and the lessee.

In either option, the following should be completed:

- a) Define and consistently implement a set of policies and procedures regarding the handling of direct payments.
- b) Implement appropriate procedures and notifications to lessees and permittees of changes in ownership interests, and updated rental apportionments.

5.2.3.2 Communication and Fiduciary Role

Communication is a challenge for any large organization with widespread geographic operations and a dynamic environment. The following findings relate to areas where DOI needs to improve communication both internally and externally with the beneficiaries and other interested parties.

Finding 1: Those delivering services often do not have a solid understanding of the overall Trust workflow and processes, and how their services fit into the overall Trust business model.

Due to the fragmented nature of Trust service delivery, communications within and across workgroups is fragmented or incomplete. When employees do not understand the entire process of service delivery, but only their contribution, misunderstandings and re-work often occur. As one employee hands-off their portion of the process to another, they may not recognize the importance and impact of the information they supply to the next workgroup in the process.

Within the eight core processes this lack of understanding of the roles and activities of other parties involved is apparent. The As-Is Team experienced this firsthand during a number of the work sessions. DOI personnel from different organizations began to see each other's perspectives and roles, and in several instances resolved long-standing problems between themselves. The communication issue also applies to a number of Tribes as they are faced with issues within their own organizations to execute compacted and contracted activities, further their working relationship with DOI, and as beneficiaries of Trust services.



Finding 2: Communication must not only be internal but external. Executive Order 13175 requires that Tribes be consulted regarding any changes or initiatives that have Tribal implications.

Tribal involvement must be gained early in the planning stages and not in the decision stages. There is also a need to communicate to the individual Indian beneficiaries to inform them of planned changes and how the changes will affect their Trust assets, what information they must provide, and information they will receive in turn from DOI.

Note: Reference the Consultation Model in Section 5.3.3 – Beneficiary Services Findings and Recommendations for additional detail.

Finding 3: There is a significant lack of up-to-date manuals and operating procedures for many Trust functions.

This is a roadblock to establishing consistent and effective execution, and adds to the problem of poor understanding of proper roles, the overlap of responsibilities, and the information needs of other units involved in a given process. However, many localized efforts to update manuals and procedures were identified, but their efforts were not being shared or coordinated across regions. In addition, there were some national-scale efforts to develop updated procedures, but some of these did not appear to be coordinated; rather, an extension of the organizational fragmentation issues described earlier.

Finding 4: There is insufficient clarity regarding what level of oversight local DOI bureaus should exercise regarding the execution of Trust activities undertaken by the Tribes. In addition, greater care must be exercised by DOI to assure that individual Indian beneficiary rights are balanced with Tribal decision-making.

DOI is achieving its major goal of promoting Tribal self-governance and self-determination by increasing the number and scope of Compacts and Contracts with Tribes. However, in some of these cases, the enduring Trust responsibility of DOI and the role of its field staff are not well defined, understood, or consistently executed. Some DOI units pursue a largely “hands off” approach to Tribal actions on their Trust lands, whereas others monitor these Tribal activities closely. Further, there are situations where individual Indian beneficiaries may receive lower returns on their holdings due to Tribal decisions, or disagree with Tribal land use decisions affecting them (e.g. for land jointly held by both Tribes and IIM beneficiaries, or for “checkerboarded” parcels mixed with Tribal land). In other cases, DOI is diminishing its oversight of individual allotted lands because Tribes are administering parts of the leasing and collection activities for them. In implementing the goal to further Tribal self-governance and self-determination, care must be exercised to balance individual Indian beneficiary rights in these types of situations.

Communication and Fiduciary Role Quick Hit Recommendation

Develop a checklist and contact lists for frequent inter-bureau actions. Also, develop short communication checklists for actions such as lease approval or modification notifications, lease cessation (cancellation, surrender, termination or expiration) notices, intent to release bonds, notices



of non-compliance (INC, letter, Order, etc.) and inspection report distribution. Distribution lists and/or matrices should be prepared at the Agency and Field Office level. These distribution lists should contain individual names, locations and contact information, i.e., phone numbers, fax numbers, Internet address/email address, and street address. The distribution list should be a locally maintained working document.

Communication and Fiduciary Role Longer Term Recommendation

1. **Launch a program of education and communication for DOI Trust service delivery personnel, as well as for the beneficiaries.**

Much can be done to provide DOI personnel with an understanding of their role and responsibilities in relation to the Trust. The reorganization recently announced by DOI provides both a need for, and opportunity to, establish better communication on the respective roles and duties of the bureaus involved in the Trust, and to help break down what have been barriers and inter-organizational turf issues. The principal focus of each DOI team member should be that of performing trustee duties. The process “hand offs,” and information needs of each party should be documented and explained, so that connected activities can be clearly seen by those involved.

Supplementing this education process should be updated process and procedure manuals, which should be made available electronically to staff and outside interested parties.

2. **Clearly define the role DOI expects its staff to play in the oversight of Compacted and Contracted Tribe activities.**

It should also provide guidance on, and increased attention to, situations where mixed individual Indian and Tribal land use planning, leases and payments occur to ensure that the fiduciary rights of Tribes and individual Indian beneficiaries are properly upheld. Further recommendations and discussion of related issues are provided in the Beneficiary Services (includes a Consultation Model), Appraisal, Forest Management, Agricultural Leasing, Long-Term Leasing, Subsurface, Accounting Management, and Cadastral Survey Services sections, below.

5.2.3.3 Technology and Information Sharing

As was mentioned, a technical review of the many systems, which are being used by the Trust was not within the scope of this study. However, due to the many interrelationships between business processes and their associated computer systems, a number of issues related to information technology (IT) are discussed below.

Finding 1: Indian Trust systems often contain duplicate, inconsistent and conflicting data.

As with many institutions, the systems that DOI utilizes were developed over decades to satisfy various business requirements. These systems were developed employing many technologies and were not well integrated. In the current DOI environment, there are four main types of data being captured: beneficiary, title, realty and accounting. Information is being entered into a number of different automated and manual systems without any reconciliation being performed among these various systems. There is also no standardized format for entering the data across the systems or across the regions. As a result, there are a number of instances where important information reflected



in such systems as LRIS, IRMS and TFAS is not consistent. As a consequence, DOI staff, in looking at or using the information in any one of these systems, often does not have accurate, complete or up-to-date information available.

There is also an absence of a unified source of information to draw upon, and typically very little information sharing occurs either within a process or across the processes and geographic regions. This lack of a unified source of consistent information makes it difficult to produce a full and complete beneficiary accounting statement that reflects accurate information and transaction activity, and assures accurate beneficiary disbursements. It also diminishes the ability of BIA, OST/OTFM, MMS and BLM units to use, share and update common information. In some cases, it has also proven either very cumbersome or almost impossible to find all of the information that may be needed to satisfy a beneficiary query or operational need.

The myriad of automated and manual systems now being used creates an environment in which systems and procedures must be separately maintained and updated. These systems each require separate training and business procedures. One of the main causes of the inconsistent and inaccurate information found across processes is due to the multiple automated and manual systems being used for realty and title. Compounding this problem is the fact that different versions of these systems are being used in different regions. On-going IT equipment purchase decisions and software acquisitions are also more costly in this environment than if a more uniform approach was employed. The following table is a representative sampling of the information currently housed in different automated and manual systems.

Table 5.2- 2 Illustration of Diverse Trust-Related Systems

Systems	Information			
	Beneficiary	Title	Realty	Accounting
ACCESS				
ALIS				
State and Local Courthouse Systems				
EXCEL				
GLADS				
IRMS				
LISLA				
LRIS				
MAD				
Paper				
PC LEASE				
RDRS				
REM				
TAAMS				
TFAS				



Even where there is an established national system for a functional area, there is a lack of uniform use of it, and very little ability to realize reduced maintenance costs, or monitor results on a more than local level. In contrast to this, the Trust has implemented TFAS, which is a system used by many commercial trusts. It has lower maintenance and upgrade costs, and a high degree of reliability, in that it is based on nationally sustained software and hardware.

In addition, OITT leadership and the Special Trustee's office have recently moved to investigate other, broadly based IT systems which might be adapted for use in the Trust and take advantage of the economies of scale which they, like TFAS, afford. Problems with the quality of the data in title and realty within the Indian Trust have been documented in earlier reports; e.g., *Interim Report and Roadmap for TAAMS and BIA Data Cleanup*. These in general are caused by a lack of data standards, quality control, and integrated systems. These inconsistencies can have a direct impact on the ability of DOI to execute its fiduciary responsibilities. DOI has recognized these problems and has begun a Data Quality and Integrity initiative in order to limit the number of systems being used and to improve the quality and integrity of the data among systems. A by-product of this initiative may be an improved ability of BIA, OST/OTFM, BLM, MMS and other agencies to access and share consistent information.

Technology and Information Sharing Longer Term Recommendations

There are a number of significant changes that DOI should take in concert to address the data sharing and data integrity issues. These changes will result in integrated information which can be shared across DOI and also eliminate the need for the multitude of manual and automated systems with redundant and inconsistent data.

1. Build a common data store (storage facility).

One of the key ingredients for an institution that has many organizational units that require access to common data in order to efficiently perform their operations is to build a data store that will house all critical components of this information, and then allow the various units to access that information for researching, reporting or processing purposes. DOI will have to reengineer business processes and change the organizational culture to effectively use it; otherwise, there will be continuous use of disparate databases. Some of the advantages of a common data store are:

- a) Single point of entry for updates and maintenance
- b) Avoidance of redundant or inconsistent data in multiple systems
- c) Query capability by many organizational units
- d) Accurate information for reporting
- e) Complete picture of a beneficiary's investment and real estate holdings

An illustration of how a common data store structure would allow information to be entered at a single point and yet be accessed by many organizational units is reflected in the following diagram. DOI data systems architecture, mentioned above, should include plans for the development of such a common data store.

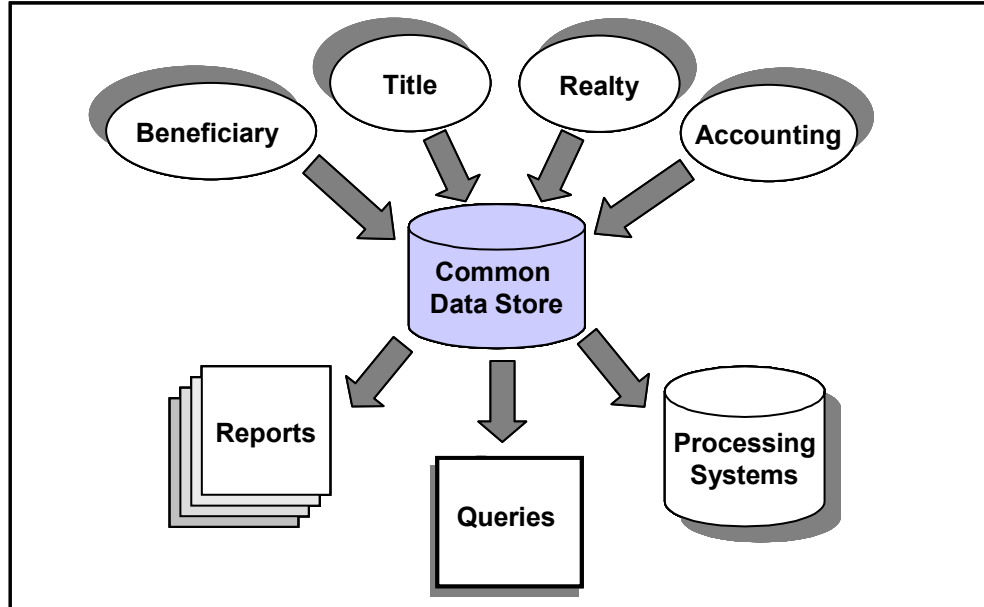


Figure 5.2- 2 Illustration of a Common Data Store Structure

2. Introduce Customer Relationship Management (CRM) technologies.

CRM technologies are utilized heavily in private sector settings and commercial trusts and center around a data store. These include using imaging technologies to digitize and share documents, tools to assist with tracking beneficiary inquiries and their status, and eventually access to the integrated, shared data store housing ownership, realty and financial information.

3. Migrate to one title system and only utilize one version of the system.

Critical data elements must be identified and standardized rules developed as to the data which can be stored in these fields.

4. Enhance the DOI-wide network infrastructure.

The infrastructure should support the transaction volumes required to ensure that all title-related data is recorded consistently by all affected DOI offices and Tribes. This infrastructure also needs to reflect the form in which title information will be shared and archived.

5. Develop a set of requirements for a realty system.

There are a myriad of automated and manual realty systems in use by DOI today as illustrated in **Table 5.2-2** above. This causes delays in research, delays in resolving probates, delays in finalizing leases and an inability to produce accurate and comprehensive asset and transaction beneficiary accounting statements. DOE should review the realty COTS systems available in the market place and then purchase and implement the same version of the realty system.

Note: The Data Quality and Integrity project has begun to identify the requirements of a subset of the more comprehensive data store that DOI needs.



6. **Institute data management standards for the entry of title and realty information across regions and across systems.**

5.2.3.4 Technology Tools

Finding 1: There is a significant problem with document maintenance nationwide.

As a result of regulations, beneficiary files set up and maintained by OST/OTFM, can only be retained for the current year and previous year. After that time these files must be put in storage. As a result, BIA and OST/OTFM staff must often request beneficiaries to provide duplicates of documents that they have previously submitted. This delays updating beneficiary information and disbursement of trust funds and often angers the beneficiaries.

Finding 2: There is a lack of the use of workflow and case management technology tools readily available.

These tools are fairly common in a transaction processing environment and serve to manage the information and processing flow to insure that all essential steps are being taken, and required information or decisions needed for subsequent steps is supplied. This minimizes rework and process "loops" which cause delay and frustration. They typically interface with the data systems established for specific processes, and utilize data in them to automatically populate fields for multiple forms and steps in a process. This is in contrast to the current environment, which is characterized by significant manual form completion and few automated interfaces to speed up processing and to reduce transcription errors. Other technology tools, such as Internet access, are also not being utilized.

Technology Tools Longer Term Recommendation

Deploy automated tools that digitize information and make it available for transaction processing with work flow sequences.

There are many technologies available that will allow documentation to be captured, stored and shared electronically, and to have the resulting digitized information incorporated into workflow tools that facilitate business processes. Deployment of these tools could dramatically reduce errors, speed the data cleanup effort, and shorten the time required to complete transactions. A near-term opportunity to assess these tools is the Data Quality and Integrity Project's efforts to systematically cleanse key individual Indian land ownership, realty and accounting information.

5.2.3.5 Cross-Process Observations

1. DOI staff and beneficiaries indicate it is not always clear if the services provided are under the auspices of the Indian Trust or another federal program. DOI staff does not always have an understanding of how or why activities they are performing are Trust-related.



2. The same standards that are burdensome to public land managers are frequently even more problematic to the Indian land manager. This often causes delays in the leasing of Trust lands that can be avoided when leasing other federal or commercial lands.
3. For a variety of reasons, including historical, cultural and resource constraints, information regarding land holding and the location of parcels is often incomplete, inaccurate or unavailable. This causes delays in several processes such as Probate and Title; and therefore, causes delays in beneficiaries receiving monies to which they are entitled.
4. In order for DOI to more efficiently fill their fiduciary responsibilities, DOI staff believes there is a need to standardize data, policies and procedures across regions. At the same time, the Tribes view the need for standardization as more bureaucracy and government control.
5. Requests for information needed for trials and other litigation require substantial attention and time by both DOI field staff and central office management.
6. There are a number of requirements issued by other federal agencies that DOI must comply with but there is no funding allocated to comply with these mandates; for example, satisfaction of environmental requirements.
7. Some Tribes have invested substantial time and money in developing systems and procedures to support the activities that they conduct. The investment made often varies due to the Tribe's ability to fund these enhancements.
8. There are many challenges that DOI staff must address when performing duties that may also lead to inefficient operations.
 - a) The ever-increasing number of beneficiaries whose whereabouts are unknown has led to impediments in finalizing leases when the lease agreement is dependent on having concurrence from some percentage of the beneficiaries who hold an interest in the property. It can also lead to difficulties in making disbursements to beneficiaries and has resulted in funds being held in abeyance for long periods of time.
 - b) Differing Tribal values, customs, priorities and objectives make it extremely difficult to implement or change DOI-wide policies and procedures. Crafting a new policy or procedure, or updating an existing policy or procedure, to accommodate the needs or preferences of one Tribe or group of Tribes may often prove to be in sharp contrast to the needs and customs of other Tribes.
 - c) Cultural patterns such as the reporting and recording of marriages, births, adoptions and deaths has lead to hindrances in the opening and maintenance of IIM accounts, delays in making disbursements, as well as causing problems in title processing and closing out probates.
 - d) Frequent beneficiary name changes or the use of multiple names by beneficiaries has caused confusion and sometimes resulted in the opening of multiple accounts for the same beneficiary.
9. When a Tribe manages enrollment, leasing and resource studies, BIA access to such records is sometimes difficult. Conversely, due to new high-level security clearance requirements, Tribal Program access to BIA records can be restricted.
10. There is a lack of understanding at the field level as to the extent BIA Trust records are public or private, such as lease and ownership information. Some of the misunderstanding is due to two opposing efforts: (1) make more information available to the public and beneficiaries, and (2) maintain greater control over and access to data files.



11. Establish clear guidance on what functions are inherently federal, to facilitate Tribal Compacting and Contracting agreements and establish consistency in their execution.
12. While Tribes are precluded from compacting or contracting for Trust functions that are considered to be inherently federal, identification of these functions is confusing. There is insufficient guidance in this regard to assist in the development of agreements under which Tribes can undertake programs and functions, causing uncertainty among the participants and inconsistency of execution.



5.3 Process Specific Findings and Recommendations

5.3.1 Probate Findings and Recommendations

Finding 1: Probate activities frequently take years to complete, resulting in potential errors, modifications and delays in distributing Trust assets to heirs and devisees.

Regions and agencies consistently reported that probate activities frequently take years to complete. Specific issues were raised regarding DOI's ability to prepare probate packages and to coordinate the execution of probate decisions.

Several factors contribute to the time required to prepare probate packages. It is often difficult to obtain decedent and family information from state and tribal vital statistics offices. States frequently do not recognize DOI's authority to obtain vital information for probate proceedings and may require subpoenas before they will release that information. This is especially true for Tribes that have compacted or contracted case preparation responsibilities. Also, locating possible heirs whose whereabouts are unknown can significantly slow the process. As time elapses, it becomes increasingly difficult to obtain the information required to probate an estate.

In order to obtain vital information on a timelier basis, OST has undertaken several initiatives:

eVitals. eVitals is an initiative being sponsored by the National Association of Public Health Statistics and Information Systems (NAPHSIS). NAPHSIS, under the eVitals umbrella, is developing a central information resource by which the Social Security Administration can verify the death of an individual regardless of the state in which that individual resided. This repository is currently being piloted in eight states and will be implemented over the next several years. It is important to note that, while the repository will not generate a notice of death, it could enable the Department to obtain an official death record of a beneficiary.

In a second eVitals-related effort, NAPHSIS is developing a platform, which allows physicians to electronically transmit death notices to the central information store. This data would be shared with the vital statistics offices in a common format that would be used by all states.

While the Department's participation in the eVitals initiative is still in the formative stage, the potential exists for DOI to automatically receive death notices as they are submitted and to access a nation-wide repository of certified death records, significantly reducing the time required to prepare a Probate packet.

VitalChek Network. OST has contracted with the VitalChek Network to obtain certified death certificates when local agencies find it difficult to obtain that information. Approximately 1,600 probate cases cannot currently be submitted due to the lack of a certified death certificate. VitalChek is assisting the Department in obtaining those certificates and is forwarding them to OST.

TransUnion Watch. Watch is an application that publishes electronic notifications when changes to targeted information pertaining to a specific population are registered with any of a number of public systems and data stores. OST is currently implementing specific Watch notifications that will enable the OTS/OTFM to update beneficiary addresses, phone numbers and other relevant information. These updates will facilitate both case preparation and estate closing activities by facilitating efforts designed to locate beneficiaries and heirs.



As discussed in [Section 5.2.3.3 - Technology and Information Sharing](#), information regarding Trust assets is distributed among multiple, independent systems of record. There is no means of accessing an integrated record of Trust assets and ownership, significantly increasing the time required to prepare a probate package.

There is little distinction between case preparation activities for small vs. large estates and testate vs. intestate cases. DOI follows the same procedures when researching family information and preparing probate packages for small and intestate estates as are followed for large and testate estates.

There are no consistent guidelines for prioritizing probate activities and reducing the overall effort and time required to complete probate activities. As a result, specific probate activities are suspended or resumed when priorities change from reducing the average age of probate cases to reducing the number of probate cases or the value in estate accounts.

There are no established criteria for making a determination of death upon request. In several areas, requests for presumptions of death are no longer being forwarded to OHA. Family members request presumptions of death when an individual's whereabouts are unknown and absence cannot be explained. In these cases, IIM accounts are placed on hold and Trust monies may not be distributed to beneficiaries for many years.

It is difficult to determine the source of funds in IIM accounts, especially for older probate cases. IIM account balances that accrue after the date of death must be distributed according to the probate order. Because there are no automated mechanisms to identify the source of funds, Probate staff must rely on paper realty records (leases, permits, etc.) to identify the source of funds in IIM accounts, increasing the time and error rate of associated distributions. The longer the probate takes, the more difficult and time consuming it is to identify the source of funds.

Probate activities involve multiple organizations. BIA typically prepares a probate package; OHA (or BIA) then adjudicates the estate and OST ultimately distributes estate assets. The lack of workflow tools (refer to [Section 5.2.3.4 – Technology Tools, Finding 2](#)) hampers cross-organization coordination, making it difficult to ensure that complete and accurate information is delivered to affected parties. As a result, probate activities take much longer to complete and are subject to higher error rates.

Current accounting practices do not rely on documentation determined to be valid during formal probate proceedings; e.g., birth certificates of heirs. As a result heirs and devisees must resubmit this documentation before they can receive funds due them from the decedent's estate.

Because the interim Probate Tracking System (PTS) was lost with DOI's lack of Internet access, the OITT is currently developing a Case Location & Status database (CLS). CLS is an interim, stand-alone database being developed in an effort to understand and track the status of current probate activities. CLS will contain information regarding the status of each Probate estate in which any assets are undistributed.

As probates are held for a significant amount of time, modifications are frequently made to the original probate to address property or heirs that may have been incorrectly omitted or included in the estate. These situations create additional delays in distributing Trust assets to heirs and devisees.



Finding 1 Quick Hit Recommendations

1. **Establish a Memorandum of Agreement regarding family information.** The OHA should work with state governments to establish a Memorandum of Agreement (MOA) under which state vital statistics can be released to DOI (including Compacted and Contracted Tribes that have assumed the responsibility for case preparation), on a privileged basis, for use in probating Trust estates. This MOA should address information regarding births, adoptions, marriages, divorces and deaths. This type of agreement has been shown to reduce the time required to prepare probate packages.
2. **Consider performing partial distributions.** DOI should consider adopting the common practice of performing partial estate distributions when most of the relevant information is available and the probate decision will require an extended time to reach. This practice would reduce the impact of lengthy probate proceedings and enable heirs and devisees to leverage estate assets (especially where those assets are required to meet ongoing obligations) while minimizing the incident and impact of incorrect distributions.
3. **Define a consistent prioritization standard.** DOI needs to develop a consistent standard for prioritizing case preparation and asset distribution activities that minimize the overall time and modifications associated with probate activities.
4. **Revise the criteria used to define small estates.** DOI should consider amending probate regulations (25 CFR 15.206) to be consistent with state probate codes that permit the summary distribution of land and monies. Changing the criteria used to define a small estate will significantly increase the number of cases eligible for abbreviated probate proceedings.
5. **Define the criteria for ordering a presumption of death.** The OHA needs to establish a consistent set of criteria for granting a request for a presumption of death. The criteria used to make a determination regarding these requests must balance the needs of the family with the rights of the individual whose whereabouts are unknown and whose absence cannot be explained.
6. **Implement an IIM account tracking process.** Until title and accounting systems can be effectively integrated, BIA Agencies should monitor decedent account activity to ensure that income can be appropriately tied to Trust assets. This will ensure that income generated after the death of a beneficiary can be appropriately distributed to heirs and devisees on a timely basis.

Finding 1 Longer Term Recommendations

1. **Create legislation authorizing DOI to obtain vital statistics on a privileged basis.**

The Department should consider sponsoring federal legislation establishing OHA's right to obtain vital statistics for heirs, potential heirs and devisees, on a privileged basis, for use in probate proceedings. The scope of this legislation should include vital information regarding births, adoptions, marriages, divorces and deaths. This legislation should reduce the time required to prepare probate packages by creating an efficient, reliable source of family information.
2. **Encourage estate planning.**

Probate proceedings can be simplified, and the time required to complete probate activities can be reduced, by encouraging estate planning. In order to support these activities, DOI

needs to train BIA agency staff in the preparation of effective, provable wills and related legal instruments.

3. Revise case preparation procedures for testate estates.

The Department should consider deferring the search for potential heirs of decedents with self-proving wills. In these cases, DOI would need to afford interested but unidentified parties the opportunity to challenge probate results, but the time required to prepare the probate package would be significantly reduced.

4. Establish an office to coordinate research efforts intended to establish the location of beneficiaries whose whereabouts are unknown.

BIA regions and agencies currently develop independent capabilities for identifying the location of beneficiaries whose whereabouts are unknown (both heirs to probate proceedings and individuals for whom requests for presumptions of death are outstanding). DOI should consider creating an office to coordinate these efforts, leveraging the capabilities of other federal investigative agencies and contracting with outside firms as appropriate.

Finding 2: DOI undertakes three primary, sometimes conflicting, Probate roles.

As illustrated in the following diagram, the Department performs three distinct, and sometimes contradictory, roles, when conducting probate activities.



Figure 5.3.1- 1 Probate Roles

As the Administrator of Trust lands, the Department must take the actions required to manage the decedent’s Trust assets in a manner consistent with overall Trust principles and objectives. These principles encourage DOI to emphasize the economic value and utility of Trust lands. In this role, BIA Line Officials counsel beneficiaries on the anticipated impacts of proposed transactions and, upon receiving an indication of the beneficiaries’ intent, make a determination as to whether those transactions are in the beneficiaries’ best interests as a group. During probate proceedings, DOI (as the Administrator) gathers all information required to probate an estate and takes the steps necessary to distribute estate assets in accordance with the probate order.



In the Executor role, DOI is obligated to manage estate assets consistently with the wishes of the decedent, to the extent that those wishes are known, rather than the beneficial owners as a group. The decedent's wishes may emphasize the cultural or hereditary value of Trust lands over their economic value. Current regulations that invest the responsibilities of the Executor in the Line Official may create a conflict when the decedent's wishes are not consistent with DOI's fiduciary obligations, strategic Trust principles or the interests of the beneficial owners as a group.

The Executor is also responsible for the preserving the integrity of Trust assets during probate proceedings, facilitating the probate process, and ensuring that heirs, devisees and claimants receive estate assets as ordered in the probate decision.

Finally, as Adjudicator, DOI must objectively weigh the interests of the decedent with the rights of heirs, devisees and claimants and justly distribute estate assets.

Finding 2 Longer Term Recommendations

1. Segregate the three probate roles.

The Department needs to segregate probate responsibilities to ensure that the decedent's interests are appropriately balanced with overall Trust objectives.

2. Establish the position of Executor to Oversee Probate Activities.

DOI should consider establishing a position equivalent to that of an Executor or Personal Representative. This individual should oversee all probate activities (from death to distribution), ensuring that estate assets are maintained in accordance with the decedent's interests during probate proceedings. The Executor or Personal Representative should also ensure that claims are discharged and remaining assets are distributed in accordance with the probate decision.

Finding 3: Probate adjudication is conducted by two organizations with inconsistent regulations, policies and guidelines.

BIA actions are governed by 25 CFR 15, Deputy Commissioner's Memoranda and precedent set by the Interior Board of Indian Appeals (IBIA). OHA is governed by 43 CFR 4 and IBIA precedent. As a result, Trust assets may be distributed inconsistently among claimants, heirs and devisees.

OHA distinguishes between IIM funds existing at the time of death from subsequent income earned. Income earned after the time of death is attached to the land from which the income was derived and distributed to the individual inheriting monetary interest in that land. BIA does not make this distinction and treats all IIM funds, regardless of whether they result from income earned before or after the date of death, as separate personal property to be distributed in accordance with the laws of the decedent's state of residence.

OHA consistently distributes real property according to the most-specific, approved probate code (Tribal code takes precedence over state code) of the state in which the property is located. BIA Deciding Officials also adhere to approved Tribal probate code. In some locations, however, BIA distributes Trust lands according to the probate code of the state of residence or domicile of the decedent, rather than the state in which the property is located.



BIA regulations, revised in January, 2001, remove the U.S. as a priority claimant against an estate to address the perceived conflict of fiduciary responsibilities (25 CFR 15.305 as annotated). OHA, however, under 43 CFR 4.251 as annotated, gives priority to federal claims that have been reduced to judgment by a court of competent jurisdiction (federal claims that have not been reduced are treated consistently with 25 CFR 15.305).

Finding 3 Quick Hit Recommendations

1. **Clarify the rules to be used to distribute Trust assets.** Separately address income and interest existing in IIM accounts at the time of death from subsequent income and interest. This policy then needs to be consistently implemented by both BIA and OHA.
2. **Direct the OHA and BIA to consistently prioritize federal claims.** OHA and BIA regulations regarding the prioritization and disposition of claims are consistent in other respects. Together, these steps will ensure that Trust assets are distributed consistently regardless of the organization that adjudicates the estate.

Finding 3 Longer Term Recommendations

1. **Clarify the status of secured liens against Trust assets.**

Trust assets encumbered by secured liens (liens obtained using Trust lands or income as collateral) are passed to heirs and devisees with the encumbrances intact. Both 25 CFR 15 and 43 CFR 4 need to be amended to clarify the status of secured liens.

2. **Consolidate all adjudication activities into a single organization.**

Moving all Deciding Officials (Attorney Decision Makers (ADMs) from BIA, Indian Probate Judges (IPJs) and Administrative Law Judges (ALJs) from OHA) into a single organization will simplify the administration of Probate activities:

- a) There would be no further need for BIA to determine which organization will adjudicate an estate (25 CFR 15.205) removing 15 days from the case preparation period.
- b) A single set of regulations, policies, precedence and guidelines would be used to govern adjudication activities.
- c) A single organization would better leverage available resources to meet workload requirements.

Finding 4: DOI probate activities are governed by multiple probate codes, increasing the complexity of distributing assets among heirs, devisees and claimants.

Deciding Officials must be familiar with multiple probate codes (state and Tribal) depending on the location of Trust lands. These complexities increase the effort required to verify the distribution of properties and subsequently delay the disbursement of IIM monies.

Probate statutes and regulations frequently force DOI to distribute decedent interests as if they are part of multiple estates simply because those interests are located in different states. Many states have adopted intestate procedures that incorporate a biased distribution of assets to provide for



the welfare of a surviving spouse. These rules do not reflect the distribution of assets located in other states, resulting in further bias and conflicting and confusing distributions of Trust lands.

Finding 4 Longer Term Recommendation

Implement a uniform Indian Probate Code.

A uniform probate code that addresses all Trust lands as part of a single estate would significantly decrease the complexity of Trust asset distribution. As with current DOI obligations, a uniform probate code would need to defer to any existing approved Tribal probate codes. Treating Trust assets as part of a single estate, however, would eliminate much of the research required to adjudicate Trust estates.

Finding 5: Coordination between BIA Agencies, and between BIA and OST, is cumbersome and untimely, resulting in delays in the distribution of Trust lands and IIM monies.

BIA Agencies frequently must coordinate activities with each other and with OST when performing probate activities. These activities include both the creation of a complete estate inventory and the distribution of assets and monies to heirs, devisees and claimants after a decision becomes final.

Creating a complete and accurate estate inventory is a complex and time-consuming task, especially when the decedent holds interests in Trust lands managed by multiple agencies or regions. In these instances, the probate staff must address issues related to the name and identification number under which the decedent's interests have been recorded in different locations – a process that may take months to complete. The integrated systems recommended under [Section 5.2.3.1 - Broad Trust Management and Asset Stewardship](#) should significantly reduce the time and effort required to create accurate estate inventories.

The increasing diversity in Trust ownership, however, also increases the difficulty associated with determining the net amount to be distributed to heirs and devisees. Probate decrees typically must be supplemented with instructions on how to distribute interest and leasing income that has accrued since the date of death. Today, BIA Agencies use different methods to calculate these distributions. Some agencies produce vouchers that specify exact dollar amounts. These vouchers then need to be amended to reflect any income accrued since the vouchers were created. Other agencies specify a dollar amount and then instruct OST/OTFM to include any income that has been accrued since the date of the authorization. In these instances, OST/OTFM must establish the source of any additional funds in determining how to distribute estate monies. Both approaches result in difficulties, and delays, in distributing Trust assets among heirs and devisees.

Where probates are governed by pre-2001 regulations, an estate can be held open for extended periods of time to satisfy claims. Current procedures require BIA probate clerks to monitor estate accounts and periodically submit claim settlement authorizations for partial payments. This practice increases the time and effort required to ensure that all parties receive appropriate distributions.



Finding 5 Quick Hit Recommendations

1. **Publish an IIM distribution policy for probate.** DOI needs to establish a consistent policy to be used by agencies when authorizing final estate disbursements. Authorization forms should identify the judgment amount, any specified distribution rules, and indicate that OST/OTFM is to calculate any accrued income and interest since the judgment date. The authorization form needs to also specify any liabilities to be satisfied out of these funds prior to calculating the net distribution. The final statement should then identify each component of that distribution: the judgment, any accrued income (including lease income, interest and dividends), claims and the net amount.
2. **Authorize recurring distributions.** The Department should consider revising current accounting policies and allow agencies to authorize recurring distributions of Trust funds to claimants. This will reduce the effort required to administer claims against an estate. (This recommendation only applies to priority claims and probates conducted according to the pre-2001 regulations).



5.3.2 Title Services, Acquisition & Disposal Findings and Recommendations

Finding 1: Title maintenance is performed by multiple, independent organizations. The Title maintenance queue is so extensive that some changes are not recorded before subsequent decisions are made which rely on affected Title information.

Official Trust Title maintenance is currently performed by BIA, Tribes and various state and local governments. In addition, BLM and MMS have separate ownership systems that may contain information relative to Indian lands. These organizations have separate requirements, procedures and infrastructures for maintaining Indian land information and none have an effective means of coordinating Trust-related Title information. The result is that Trust title records are not integrated and are inconsistent.

When LTRO/TSO updates or changes are made, there are no procedures in place to ensure that these updates are consistent with BIA agency/Tribal changes. The inconsistencies are created when Certified title maintenance lags behind the operational needs for title information at the agency/field or Tribal locations. TSRs are not updated, or automatically produced, as title maintenance occurs.

Recordation policies are not standardized regarding document setup and recordation for each type of transaction. Some BIA Agencies submit all short-term leases, leases for nominal payment or permits to the local servicing LTRO/TSO for recordation, while others do not. Redundant recordation happens as realty personnel at agencies are also recording these leases and permits on local systems, as well as sending them to the LTRO/TSO. In the current environment, LTROs and BIA Agencies (and in some cases Tribes) each maintain separate title and utilization records. While DOI needs to maintain a complete record of Trust asset utilization (leases, permits, ROWs, etc.), most of these transactions do not require title changes. These three transactions make up in excess of 90% of all leasing activity and 70% of all title- and utilization-related transactions. In addition, lease renewals, expirations and cancellations are seldom recorded.

BIA Agencies report approximately 30,000 applications for non-probate conveyances and encumbrances per year of which approximately 69% are approved (Data from the 1997 BIA Annual Land Report). In addition, approximately 6,000 to 8,000 estates are probated each year.

According to the 1997 BIA Annual Land Report, leases were only recorded for four to five million of the 56 million Trust acres. Some of the remaining Trust land is under permit, may be categorized as idle lands, cannot be leased or was not included in the report.

It is estimated that LTRO/TSOs are currently processing in excess of 200,000 requests per year, including recordation requests and requests for certified and uncertified TSRs, Individual/Tribal Trust Interest reports and Estate Inventories (BIAINVs). Recordation requests, however, may represent less than 10% of the total number of title-affecting Trust transactions. The LTRO/TSO infrastructure and organizations are overwhelmed and cannot keep up with the huge volumes associated both with probates and conveyances as well as with the attempt to record short-term leases and permits. LTRO/TSO maintenance typically lags behind BIA agency and Tribal updates.



A mission of DOI is to maintain a complete record of Indian Trust assets and ownership. The extensive recordation and encoding queue prevents LTRO/TSOs, BIA Agencies and Tribes from sharing Title information in a timely manner, making it difficult to maintain current and accurate Title records. The inability to share Title information on a timely basis prevents LTRO/TSOs from certifying Title status as accurate.

To address this issue, LTRO/TSO managers met in October 2002 to begin evaluating and standardizing recordation policies and information support. This meeting included both BIA and Tribal LTRO/TSO managers. LTRO/TSO standardization activities are expected to be complete by June 2003.

Finding 1 Quick Hit Recommendations

1. **No longer record leases and permits as legal encumbrances upon title in the LTROs/TSOs.** Halting the practice of recording leases and permits as encumbrances upon title will reduce the workload in the LTROs and TSOs. Reducing the workload will enable LTROs/TSOs to be more responsive in updating asset and ownership records.
2. **Authorize Line Officials to certify the accuracy of Trust land utilization.** DOI needs to change the Deputy Commissioner's delegation of authority regarding title certification to authorize LTRO/TSO managers to certify the accuracy of the land descriptions and ownership and Line Officials to certify the accuracy of land utilization.
3. **Standardize the conditions under which transactions are recorded.** Recordation policies need to be updated to identify the conditions under which transactions should be recorded and the documents that must be recorded for each transaction. These policies then need to be implemented consistently across all LTROs and TSOs.

Finding 1 Longer Term Recommendations

1. **Implement an integrated, nation-wide title system.**

DOI needs to consider consolidating all title maintenance into a single, nation-wide system of record. The title system needs to maintain a record of Indian Trust lands and ownership, legal encumbrances (mortgages, life estates, ROWs, Mineral Access Agreements, etc.). This system needs to be interfaced with BIA systems used to maintain a record of Indian Trust assets and ownership. Consolidating the many different title and realty records into nation-wide systems will reduce the time and effort required to maintain a complete, current and accurate record of Indian Trust lands, ownership and utilization. These records, and those that do not encumber title, should be maintained in a Land Information System, which can be updated at the local level.

2. **Create a single archive system.**

DOI should maintain a single archival record (based upon electronic information provided by BIA Agencies) that meets 16 BIAM and other federal records retention strategies.



3. **Streamline recordation and encoding of documents to eliminate duplicate Title maintenance.**

The Department needs to consider streamlining and consolidating LTRO, BIA agency and Tribal recordation and encoding procedures. Business processes should be redesigned to record Trust transactions once, eliminating duplicate efforts and data, thus freeing resources to ensure that Trust information is maintained in a timely manner. Consolidating and integrating recordation procedures will improve the efficaciousness of Trust asset management and beneficiary services. Standards should be developed for recording leases against land use in local land records. Introduce monitoring procedures to ensure continued records maintenance at field offices. Establish maximum time limits for “encoding” land encumbrances and track performance against those thresholds. Consider developing a less formal but still standard means of documenting sole owner use and land use without permit so that all granting of Trust land use is recorded in some way—preferably at the local level—so that comprehensive land status across the Trust is known. Analyze the legal, fiduciary, and privacy impacts of allowing BIA Agencies, Field Offices and Tribes to submit digital images of records, in order to reduce the possibility of Trust records loss or deterioration while providing control over sensitive documents and assisting in administration of modifications to land use records.

4. **Use staff now performing redundant functions to eliminate inconsistencies across systems and to reduce the existing workloads.**

Eliminating duplicate maintenance activities should enable the Department to free experienced staff to resolve these issues. These resources can also be used to reduce the extensive workload of title-related maintenance activities created as a result of the December 5, 2001 Temporary Restraining Order and subsequent Consent Order. Other actions that can ease the title workload are addressed in Finding 6 of this section.

5. **Coordinate title changes across LTRO/TSOs, BIA Agencies and Tribes.**

Changes submitted to an LTRO/TSO should be accompanied by authorization documents. LTRO/TSOs, in turn, should send a change authorization to all affected LTRO/TSOs, BIA Agencies and Tribes. After receiving updated title reports indicating that changes have been consistently applied in all affected offices, the LTRO/TSO should send a change confirmation to the originating office.

6. **Implement digital imaging in the field.**

BIA Agencies need to create digital images of documents and perform the activities required to maintain a complete and accurate record of Trust assets, ownership and utilization. These records need to reflect all Title and utilization-related transactions that impact the subsequent use of the land or that do not expire upon the death of the grantor.

Finding 2: Acquisitions, trust conveyances, disposals and applications for ROWs are taking a long time to complete, delaying land-use transactions and resulting in missed opportunities potentially penalizing the beneficiaries.



Acquisitions, trust conveyances, disposals and ROWs currently take months or years rather than weeks to complete. These extended timeframes may increase the economic impact on beneficiaries and reduce the Department's overall ability to effectively manage Trust assets.

For example, Fee-Trust acquisitions frequently take two years or longer to complete. Much of this time is required to comply with Deputy Commissioner's memoranda requiring BIA to offer several consecutive consultation periods with state and local governments and the general public. IBIA precedent requires BIA to include the information used to evaluate Trust acquisitions in packets sent to state and local governments and other interested parties when soliciting comments. These governments and/or other interest parties frequently request extended periods of time to respond to each request, lengthening the overall acquisition timeframe.

In California, consortiums have been created to facilitate Fee-Trust acquisitions within the Northern, Central and Southern California Agencies. BIA and the Tribes have established Memorandums of Understanding in which the Tribes provide funding and BIA provides space, office supplies and supervision. The result is a group of positions that have been designated to process Fee-Trust applications and reduce the pending acquisitions workload.

Finding 2 Longer Term Recommendations

1. Adopt expedited procedures for the acquisition of fee interests in Trust parcels.

Many objections frequently raised by state and local governments and other interested parties are not relevant to these acquisitions. DOI is already managing the land, and has already accepted environmental and archeological responsibilities. BIA or the Tribe, rather than the local government, typically provides municipal services – especially for on-reservation acquisitions. The loss of tax revenue is typically negligible and may be offset by the Tribe.

2. Encourage Tribes, state governments and local governments to establish partnerships focusing on current activities and future land use plans.

The relationship between Tribes and state and local governments has a significant impact on the likelihood, effort and time required to complete fee to trust acquisitions. Developing mutually beneficial relationships should decrease the effort and time required to accomplish beneficiary objectives.

3. Consolidate state, local and public consultation periods into a single, 30-day period.

Several months could be removed from the timeframes required to complete trust transactions if notification periods were concurrent rather than consecutive. This notification would need to be issued after BIA's analysis of economic, environmental and archeological issues is complete to provide the state and local governments with an adequate justification for DOI's decision.

Finding 3: Current ROW procedures do not always ensure that beneficiaries are compensated.

Historically, beneficiaries were not consistently consulted with, or compensated for ROWs. Many DOI, state and county construction activities undertaken years ago did not apply for, nor



gain consent and approval for ROWs over Tribal Trust and individual allotted lands. These “Imperfected ROWs” result in unfunded mandates to create ROWs for completed construction activities. Imperfected ROWs also raise compensation issues that must be addressed before additional rights can be granted.

A separate ROW issue exists where ‘landlocked’ Trust parcels are surrounded by private property across which no access has been granted. Any parcel of land that cannot be easily accessed is especially difficult to manage.

In addition, DOI is not always informed when a grantee permits the secondary use of an existing ROW or easement. This is especially true for HUD housing projects and state roads construction projects. When secondary ROWs (also called piggy-back ROWs) are granted without advice to DOI, it is difficult for the Department to ensure that Trust landowners are consulted or compensated.

These historical issues impact most BIA regions. The Department, however, has undertaken region- and agency-specific efforts to address imperfected and secondary-use ROWs and landlocked parcels:

- a) The Unitah & Ouray Agency has established formal procedures for identifying and correcting imperfected and secondary-use ROWs involving access to mineral rights. These procedures have been documented in agency manuals and are used by Realty staff to correct ROW issues on a case basis.
- b) Realty Specialists in the Pacific Region have developed procedures for identifying and acquiring access to landlocked parcels.

Finding 3 Quick Hit Recommendation

Evaluate the Unitah & Ouray Agency ROW handbooks. Identify any changes required to implement similar procedures across BIA. While the U&O Agency handbooks contain references to agency-specific resources, the Department should consider using those handbooks as a starting point in developing nation-wide procedures.

Finding 3 Longer Term Recommendations

1. Ensure beneficiary consent and compensation.

The new business model needs to ensure that beneficiaries are consulted with, and justly compensated for, all ROWs, easements and mineral access agreements. DOI should consistently include language in ROW agreements to preclude any subsequent use without prior, written Departmental approval.

2. Establish a specific source of funds to address “Imperfected ROWs”.

The Department should consider setting aside funds specifically to remedy Imperfected ROWs. These funds would be used to enable the Department to maintain a complete, accurate record of Title, ensure that beneficiaries are justly compensated for the use of their lands and improve the BIA Agencies’ ability to meet Trust and beneficiary objectives. Correcting Imperfected ROWs will also reduce the overall time required to complete ROW transactions and manage Trust assets.



Title Services, Acquisition & Disposal Observations

1. As noted in Section 5.2.3.3 - Technology and Information Sharing, DOI maintains multiple, non-integrated title and title-related systems, including manual systems in many locations. While some systems (i.e. LRIS, IRMS, etc.) are used in several locations, separate software implementations are used for each BIA region and, in some cases, for different BIA Agencies within a region.
2. Title and title-related information for a single individual is often recorded in several different locations. Today, these systems frequently have overlapping and inconsistent information and DOI organizations lack the tools required to validate and coordinate title-related data on a timely basis.
3. Most BIA regions and agencies anticipate an increase in Disposals (Trust-Fee transactions). Because ILCA amendments of 2000 restricts beneficiaries' rights to bequeath interests in Trust lands, individual beneficiaries are expected to transfer Trust lands to Fee status in order to preserve their children's ability to inherit family property.
4. The December 5, 2001 Temporary Restraining Order and subsequent systems shutdown is having a tremendous negative impact on BIA's ability to meet beneficiary needs. While core systems are being re-instated, access to those systems has not been widely restored.



5.3.3 Beneficiary Services Findings and Recommendations

Finding 1: The Trust servicing activities have been operating without a clear strategic vision for the delivery of beneficiary services, adequate policy and procedures, appropriate access to computer systems containing accurate information, and without a performance measurement process. Consequently, the delivery of beneficiary services was found to be inconsistent across the regions and achieving various levels of beneficiary satisfaction and confidence. However, a number of individual locations have instituted improved methods and service levels.

There is a heavy emphasis placed on beneficiary services at all levels within DOI Trust operations. Personnel were found to be hard working and, in general, conscientiously addressing beneficiary requests. However, beneficiaries find that dealing with servicing offices is time-consuming and often the services received do not meet their needs. Unfortunately, those delivering services are often frustrated due to the demand on their time to assist beneficiaries while trying to perform other assigned duties. Due to the lack of department-wide beneficiary services policies and procedures, servicing office staff cannot always provide timely responses. They also must deal with ineffective means of accessing and obtaining accurate and sufficient information to support timely responses. For example, approximately 75% of the daily requests require a technician to conduct further research to formulate a response. Conducting research is hampered by the lack of department-wide procedures and access to a single source for accurate Trust information and requires extra time. The delay can impact beneficiary satisfaction and confidence. This is in contrast to various comparable industries, which place great emphasis and importance on customer satisfaction. These industries have beneficiary service information on-line and immediately available to service representatives. They have procedures in place, trained customer service representatives and an IT environment with reliable access to accurate information so the service representatives can focus on getting to know the beneficiaries, solve their problems and monitor their satisfaction.

To improve the delivery of services, several servicing offices, such as Farmington Indian Mineral Office (FIMO), MMS, OST/OTFM, Yakama Nation and the Salt River Pima-Maricopa Indian Community have implemented a “one-stop shop” concept. A common objective of these offices is a willingness to answer all beneficiary requests, regardless of the subject matter. Each of these offices has implemented procedures that they consider effective for achieving beneficiary satisfaction. The procedures may include documenting and tracking beneficiary requests, beneficiary service specific personnel, outreach activities, information kiosks, rapid data retrieval systems and beneficiary satisfaction surveys. The systems used for documenting and tracking the requests also store the beneficiary satisfaction results that provide performance measurement information used to improve the delivery of services as well as beneficiary satisfaction. There is little consistency or standardization of these improved procedures across other servicing offices.

The majority of servicing offices have initiated some capability for documenting and tracking beneficiary requests. Sign-in sheets, planning calendars and individual activity logs are often used to support these functions. A few offices use automated spreadsheets and databases to collect this information, however, in most of the offices this tracking is paper-based. In addition, the majority of the current tracking methods do not support an analysis of the beneficiaries’ requests.



Performance measurement metrics for the most part, measure output activity and timeliness of responses rather than measuring outcomes or customer satisfaction. This type of information would be useful in gaining an understanding of future needs. However, there are few, if any, beneficiary satisfaction collection activities performed by these offices. Several offices do perform telephone follow-up on a time available basis resulting in beneficiaries receiving inconsistent levels of service from one office to another.

Frequently, the initial servicing office must transfer or request information from another DOI agency or an external organization. Even though the request is transferred, the original servicing office is held accountable for the response. The lack of an end-to-end tracking capability across organizations limits the servicing office's ability to provide proactive support to the beneficiary or requestor.

The inconsistent delivery of Trust services may have a negative effect on the beneficiaries' confidence in the Department's ability to deliver Trust services. The lack of a single point of contact for beneficiaries is inconsistent with commercial trusts and other leading providers of customer service. Beneficiaries do not have a clear understanding of the Department's operational policies and procedures; therefore, they must contact different organizations and personnel in order to obtain a response to a request. In many cases, the beneficiary contacts a person whom they are familiar or calls a telephone number that they have been successful with at obtaining information in the past, regardless of the request subject matter. This adds to the inefficient operations within the Department, which affects the quality of service delivery.

It should be noted that the *Comprehensive Trust Management Plan* has identified beneficiary services as one of its six strategic goals. High quality beneficiary statements, services and communication have individually been established as objectives under this goal. The recommendations below are aimed at building on this important directional start.

Finding 1 Quick Hit Recommendations

- 1. Develop the existing beneficiary services strategic objectives that are contained in the draft DOI *Comprehensive Trust Management Plan* into policy and procedures that can be implemented across the Department.** Part of this exercise is to develop performance measurements based on outcomes, rather than outputs. While this is presented as a quick hit, the policy, procedures and performance measurements provide a "building block" for the longer-term solutions.
- 2. Perform a brief analysis of the tracking system currently being used by MMS.** Determine its practicality to serve as a candidate for implementation in all servicing offices. Analysis should mainly be based on functionality for fulfilling the Indian Trust Strategic Objectives, ease of use and implementation cost. The implementation plan for this would need to address appropriate training and the elimination of current manual processes. A data capture system "backend" will need to be developed to collect performance measurement metrics and present them in a meaningful manner. The performance measurement information can be used to monitor the delivery of beneficiary services and to help determine the workload requirements for the delivery of "one-stop" beneficiary services.
- 3. Use the BIA Eastern Navajo Agency and FIMO as models to establish an early "point of contact" for beneficiary services within each servicing office.** The Real Estate Officer at



the BIA Eastern Navajo Agency took the initiative to appoint a Realty Clerk to serve as the Public Contact Person. This “single point of contact” has proven to be very successful in providing services to beneficiaries and non-beneficiaries while reducing the workload on program specialists, thereby increasing their efficiency. FIMO uses a similar “point of contact” by having designated staff receive telephone calls and walk-in inquiries with detailed requests being referred to program specialists. By using these two models, an early “point of contact” capability can be established in other servicing offices. This early contact capability can help determine an operational concept for the delivery of “one-stop” beneficiary services.

4. **Develop beneficiary service training modules and appropriate informational materials.** Training and information materials should be specific to beneficiary needs and priorities, such as instructions on “who to contact” or “where to look” for help in resolving Trust issues and concerns. The strategy for implementation should consider the inclusion of these training modules with existing out-reach activities as well as the Beneficiary Consultation Model (see Finding 4 of this section), which is a long-term recommendation. The training should be developed in modules that lend themselves to a variety of implementation methods.

Finding 1 Longer Term Recommendations

1. **Develop a common, standardized beneficiary services support system.**

Servicing office staff needs reasonable access to information required to satisfy requests with accurate and timely responses. The major system components that should be considered include:

- a) Data store containing beneficiary information and related title, realty, probate and accounting information and responses to previous requests. This information is required to formulate timely responses that are accurate and consistent (see Section 5.2.3.3 – Technology and Information Sharing).
- b) User interfaces which employ the most current technology, such as “touch screens” for data access, entry and update so less time is required to find and maintain information, as well as providing the foundation for use by beneficiaries.
- c) Beneficiary request and tracking and performance metric capture capability to proactively support customer relationship management. This system should also be able to show any prior beneficiary contact and the resolution of that contact. It should also have the capability for pattern analysis and management monitoring reporting.
- d) Training for DOI and supporting communications for the beneficiaries to enhance positive interactions with the beneficiaries and/or requestors.
- e) Expansion capability so later in the implementation phase, beneficiaries may have reasonable access to their own account information, thereby reducing the number of requests from beneficiaries. For example, the Yakama Nation developed a kiosk capability for beneficiaries to access their land record information.
- f) Provide a cross training program for each servicing office staff so backup support is readily available when needed. The FIMO cross training program should be considered for implementation at other servicing offices.



2. Establish a “Beneficiary Service Center” to receive initial beneficiary or requestor contact.

The service center (also referred to as a call center) should be based on the “one-stop” concept for inquiries pertaining to all Trust-related activities within DOI. The overall goal of the center is to provide beneficiaries and requestors with timely and accurate responses to their requests. To achieve this goal, the center(s) staff will need to have rapid access to complete and accurate Trust information. The center will improve relationships between DOI and beneficiaries by:

- a) Providing beneficiaries access to “front line” Trust service specialists
- b) Leveraging the Department’s current efforts to implement a common architecture and Trust data store
- c) Ensuring that a timely and accurate response is delivered to each request
- d) Addressing all requests, including those that cross DOI organizations and business processes
- e) Documenting beneficiary requests into automated call logs and tracking all requests to ensure that a timely response was issued and that beneficiary satisfaction was achieved
- f) Retaining prior contact information to ensure that beneficiaries are not repeatedly being faced with the same or similar issues
- g) Performing pattern analysis to uncover and address recurring beneficiary issues
- h) Evaluating beneficiary feedback and the quality of service
- i) Engaging various communication mediums to ensure that all beneficiaries have access to the center
- j) Planning future capability for beneficiaries to have reasonable access to their respective Trust-related information

There are several architectures available to implement a nation-wide service center; ranging from totally centralized to totally decentralized. Since the center must support the delivery of beneficiary services nation-wide, consideration should be given to a distributed network or virtual type service center. The distributed network architecture allows decentralized regional, agency or Tribal data stores to be connected to a centralized data repository. Trust data could be downloaded to the decentralized data stores (nodes) several times a day, providing the decentralized servicing staff access to Trust information that is relatively current. The staff and data stores located at the decentralized nodes could provide backup to each other during periods of peak request loads. Telephone calls could also roll to other nodes or to the central office when called telephone numbers are busy. This architecture allows the decentralized staff to continue providing face-to-face contact with many of the beneficiaries.

Consideration should also be given to a “tiered” approach within each node and central office for delivering Trust services. The first tier level staff should be able to answer 80-90% of the requests, with the other 10-20% being assigned to second or if necessary to a third tier level staff. The staff at each second and third tier would have more specialized skills to address the more complex requests. This concept would allow the servicing office (first tier) closest to the beneficiary to respond first. Since the closest office is connected to a network, any help required from the second and third tiers to resolve the request could be obtained from throughout the network. The person receiving the request would “own” the response and would ensure that the

requestor receives his/her response. This would also alleviate the need for the beneficiary to call multiple areas.

Future expansion should consider providing an interactive e-government capability, which allows beneficiaries to have access to their Trust information. This allows the beneficiaries to answer some of their own requests and reduce the “front line” daily workload.

The following diagram presents a high-level view of the distributed network.

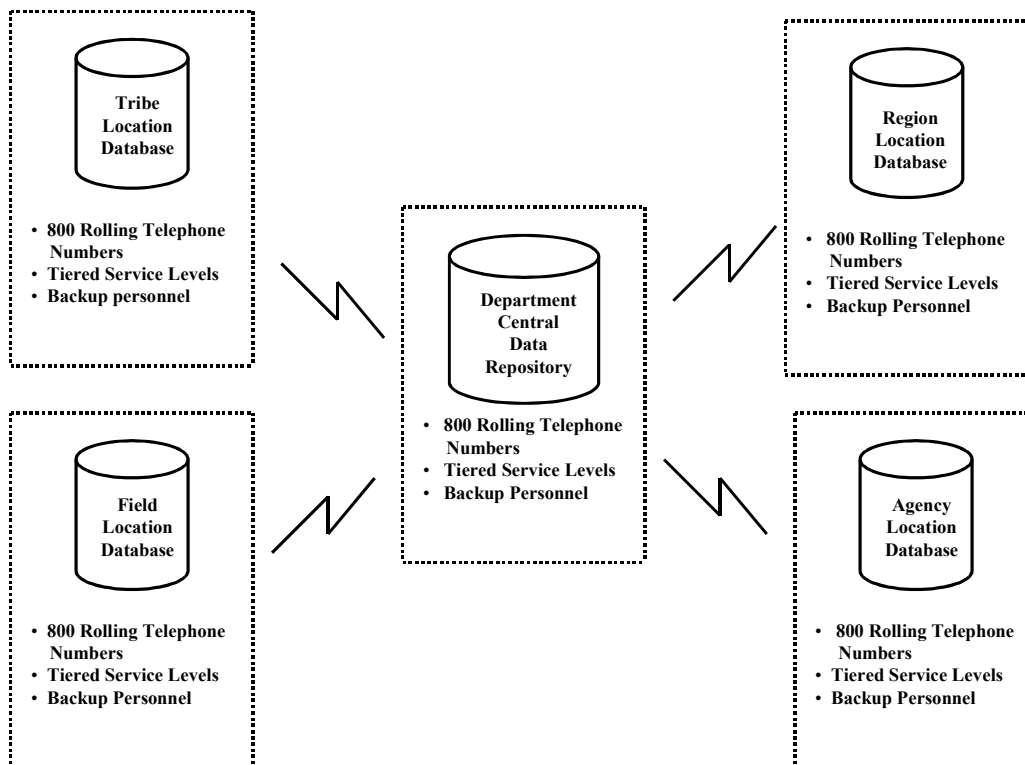


Figure 5.3.3- 1 Distributed Network High-Level View

Finding 2: Beneficiaries are having trouble interpreting and understanding their account statements, oil and gas statements and other Trust-related reports. Beneficiaries find the current codes confusing and consequently, they do not understand what money is being received from specific Trust assets.

There are initiatives underway to remedy this problem, but the beneficiaries continue to not understand the source of their Trust distributions. This confusion results in a significant increase in requests for explanations received immediately following a Trust asset distribution. Descriptive explanations, using terminology that the beneficiaries understand, need to be provided along with any Trust related documents. The beneficiary training for the revised



statements format should be part of the overall Department training program and outreach activities.

Finding 2 Quick Hit Recommendation

Assemble an interim working group to simplify beneficiary statements. To improve the efficiency of services provided to Indian beneficiaries and decrease the difficulty beneficiaries have with interpreting statements and reports, an interim working group should be assembled to simplify the statements so that they are useful to the beneficiary. The working group should have beneficiary representation. An examination of statements and nomenclature used in the commercial trust industry would be beneficial in designing the Trust-related statements.

Finding 3: The MMS Indian Compliance and Asset Management (ICAMs), OST/OTFM and FIMO outreach programs have been very successful in providing beneficiaries with information.

These outreach activities are usually tailored to meet the needs of the local beneficiaries. Enhancing and extending the current outreach programs is an opportunity to improve the trustee-beneficiary relationship and build beneficiary confidence.

Finding 3 Quick Hit Recommendation

Use the experience gained from the MMS, FIMO and other outreach activities to broaden them into department-wide outreach activities. The existing activities should be enhanced to include additional Trust related topics and to include participants from BIA, MMS, BLM, OST, OHA and OST/OTFM. Participation in the planning and implementation of future department-wide activities should also include BIA, MMS, BLM, OST, OHA, OST/OTFM, as well as beneficiaries. It is particularly important for BIA Realty staff and OST/OTFM staff to participate in outreach program activities because the majority of beneficiary inquiries concern land record and account information. Particular attention will have to be paid to the implementation of outreach programs in Alaska where beneficiaries are in remote locations and outreach events are dependent upon the seasons.

Finding 4: There is insufficient communication between DOI and the individual Indian beneficiaries.

Roles and responsibilities of each party are misunderstood. The beneficiaries feel that they do not have enough participation and are not part of the decision process for actions that have an affect on the asset management of the Indian Trust. This has caused the relationship between the parties to be less than a partnership and not conducive to the effective management of the Trust.

Finding 4 Longer Term Recommendation

Develop a Beneficiary Consultation Model to enhance the partnership between DOI and beneficiaries and help accomplish the Department's strategic objective to be more beneficiary-focused.

DOI consultation with beneficiaries is mandated by Executive Order 13175 and provides the opportunity to cooperatively interact and share decision-making. For example, implementation the Department's *Comprehensive Trust Management Plan* will require a high degree of cooperation and coordination between all entities and activities if the Plan's goals and objectives are to be achieved successfully. Development of the Beneficiary Consultation Model should begin with a review of the current Tribal consultation programs already in place, such as the US Fish and Wildlife Service and the USDA Forest Service models. Additionally, the US Forest Service community relations model should also be examined.

The following diagram presents a high level approach for developing a Beneficiary Consultation Model. However, a major point for consideration is that beneficiaries traditionally prefer face-to-face contact, which may make the use of written surveys and telephone calls ineffective. Additionally, the use of technology may need special attention to ensure its acceptance and effectiveness. While beneficiary involvement and ownership are critical to trust reform, success of the Consultation Model will depend heavily upon the frequency of consultation. When interaction is increased, communication channels, feedback and responsiveness to beneficiaries should improve throughout the Department.

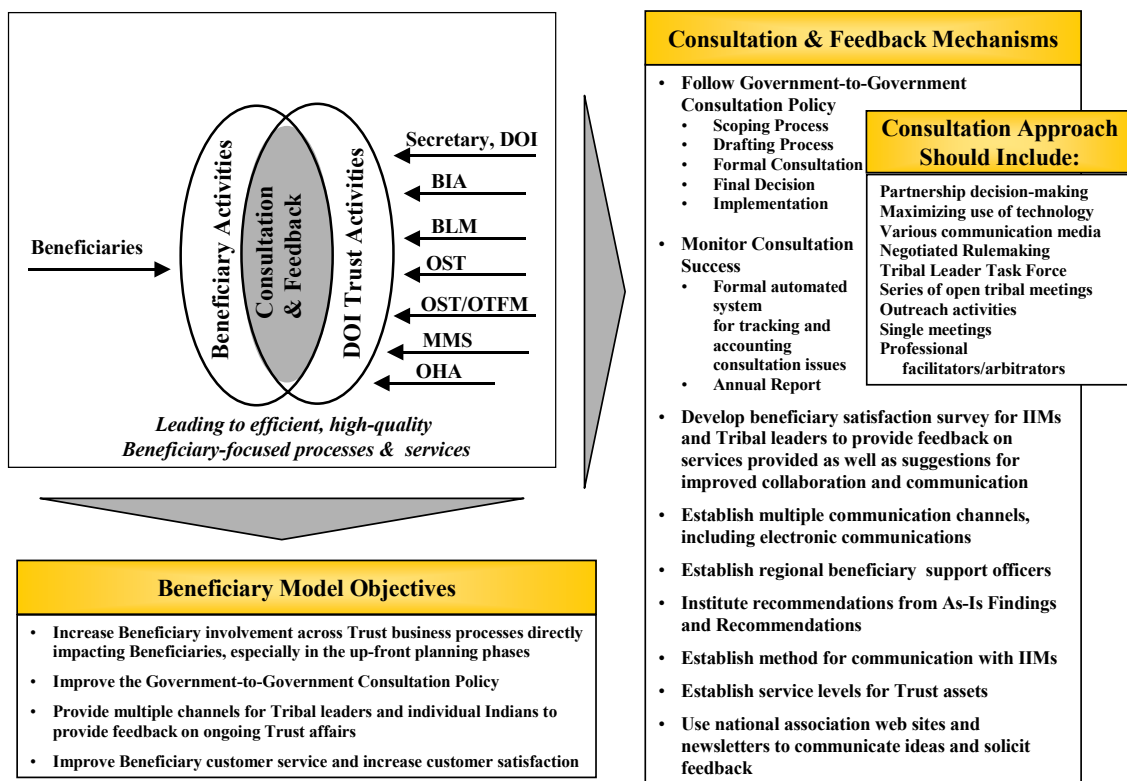


Figure 5.3.3- 2 Beneficiary Consultation Model High-Level Approach

Beneficiary Services Observations

1. Many beneficiaries live in rural areas without access to telephone and electrical accommodations, which forces them to travel to servicing offices. Due to the size of the



- service area and the geographic location of the servicing office, the distance that beneficiaries must travel can be a hardship and can delay the provision of services, particularly when beneficiary follow-up is required. The distances between DOI offices can also delay the provision of services when documents have to be forwarded for approval by the delegated authority in another location. Climate and other environmental factors can also limit the provision of services to certain times of the year with long intervals between favorable conditions. . In addition, there are beneficiaries who have Trust assets living in major urban areas without direct contact to servicing offices. They are faced with a similar dilemma in receiving Trust services.
2. Most servicing offices receive both Trust-related and non-Trust-related requests. The distinction between the two types of requests sometimes unclear to the beneficiary and even to DOI staff. These offices also respond to local, county, state and federal government entities, the general public and Indians who may be future beneficiaries. In addition, congressional inquiries may be received if a constituent (beneficiary or non-beneficiary) contacts his or her congressman about being dissatisfied with services provided. Therefore, many servicing offices act as public service providers even though they only receive funding for program-specific tasks. Responding to the non-beneficiary requests occasionally impedes timely response to beneficiary requests.
 3. There was an expressed need for additional training for both servicing office personnel and beneficiaries. The work session participants emphasized the need for standardized technical training at the entry, intermediate and advanced levels and customer relationship management training for service office personnel. Training is also required to help the beneficiaries understand the Indian Trust, how to receive services and to understand their account statements. (See [Section 5.2.1.3 - Training and Resource Management](#) for further comment.)
 4. The MMS Indian Compliance and Asset Management (ICAM) staff has implemented a document tracking system, which allows staff and managers to verify that responses have been made to beneficiary requests. In addition, the system provides managers the capability to quantify the types of requests or problems received and track the progress being made towards resolution. Most importantly, the summary statistics on the frequency of problems and length of time required to respond can be used to identify impediments to trust business processes. The MMS ICAM staff stated that its experience to improve the relationship with beneficiaries has been based on their ability to have frequent contact and to provide honest, straightforward, accurate and timely responses to the beneficiaries' request. This frequent contact, along with access to the information stored in the tracking system, has allowed the ICAM staff to know many of the beneficiaries by name and their respective needs, which has greatly improved the delivery of services and more closely modeling beneficiary services provided in the commercial world.
 5. To improve the services provided and increase beneficiary satisfaction, some servicing offices make direct beneficiary contact through formal outreach programs. Servicing office staff uses these opportunities to provide information and answers to questions. Current outreach opportunities include use of scheduled meetings, advisory boards, committee participation, radio programs, setting up booths at trade shows and publishing notices in Tribal newspapers and on Tribal web-sites. The visibility gained by attending Pow-Wows and other public events is an excellent opportunity for informing both Indian beneficiaries and the general public about Trust programs and services.



5.3.4 Appraisal Findings and Recommendations

The recommendations and findings recorded in this section apply to those instances when a certified appraiser conducts an appraisal on Trust lands, produces an appraisal report or reviews a 3rd party report and certifies his or her findings in accordance with the Uniform Standard of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standard for Federal Land Acquisition (USFLA). Surface or subsurface asset valuations are an input to the property appraisal. On June 20, 2002 BIA authority to perform Trust appraisals was revoked and the Office of Appraisal Services (OAS) was transferred to OST by Department of the Interior Secretary's Order 3240 dated March 12, 2002. The move was made to eliminate any perceived and/or potential conflict of interest between an appraiser and BIA or Tribal Realty Officials.

Note: Additional findings and analysis can be found in the *DOI Trust Reform, Final Report and Roadmap* dated January 24, 2002.

Finding 1: OAS appraisal requests are received on an ad hoc basis and there is little screening and prioritization of the requests making workload planning difficult and producing service backlogs. As a result, many transactions involving Trust lands cannot close within a reasonable timeframe.

The present OST/OAS approach to producing appraisals in response to tract-by-tract specific requests raises significant issues. A recent report concludes that approximately 40% of all appraisals completed were not utilized; but at the same time, appraisers are aware of instances in which they believe appraisals or appraisal reviews should be requested but have not been submitted for service in the past. For example:

- a) Under current practice and procedure, Tribes that lease Trust land for homesites should be requesting appraisals, even if the lease will be written for \$1 over 25 years. Tribes believe that requesting appraisals associated with these leases would slow down transaction closings significantly, thus formal appraisals are often not requested.
- b) Some Agencies and Tribes are issuing long-term permits when a negotiated lease would be a more appropriate land use instrument because permitting does not require an appraisal to be produced before the transaction can be completed.
- c) Tribes and Agencies are holding back their requests because they know the OST/OAS Regional Office already has a substantial backlog. In the Rocky Mountain Region, staff estimates it often takes six to nine months to sell land because of their appraisal backlog.

Although elimination of the appraisal request backlog was identified as a key objective of HLIP 4, and teams of appraisers from across the 12 regions have been periodically dispatched to deal with a backlog that develops in a specific region, little substantive progress has been made in preventing the cause of backlogs from reoccurring. Many Regional Appraisal Offices also have to react to seasonal demand for reports that balloons mid-July through year-end as Realty Officials prepare for annual lease renewals.



Finding 2: Appraisals are not completed in concert with development of land use plans as in commercial trust operations.

In each region, the OST/OAS appraisal process begins with the receipt of a request, usually in a BIA or Tribal Realty Office, for an appraisal report or review associated with a business transaction. This approach is in contrast to commercial trusts that appraise land regularly, approximately every three years, as a routine course of business rather than in response to a specific request on a specific tract.

Two regions currently use an approach similar to the commercial model and produce large tract appraisals or studies and then generate lot-specific reports from that information:

- a) In the Great Plains Region, the Regional Appraiser inputs and updates appraisal factors (market rents, cap rates, land productivity, etc.) in the MAD system for each agency in the region annually. He or she then signs an Agency Report indicating the factors have been tested and the resulting owner values are credible. The majority of the region's appraisal budget is transferred to BIA Agency Offices, so when an appraisal need arises, an agency staff person can input allotment information and the owner or owners' identification(s) into MAD, which accesses ownership and lease information from its databases, calculates each owner's land value and produces the appraisal report(s).
- b) In the Midwest Region, much of the Trust land is lakeshore property and the "highest and best" use of that land is residential or recreational. The Regional Appraisal Office performs an annual fair rental appraisal of the land and beneficiaries can then lease the land for residential or recreational use at the established value. In response to specific tract appraisal requests, the Appraisal Office creates restricted use reports from the annual mass appraisal. This conforms to USPAP Standards 4 and 6 (mass appraisals, market approach).

Findings 1 and 2 Quick Hit Recommendations

1. **Provide standardized appraisal training.** BIA Agency Superintendents, Realty Officials and all staff who deal with land valuations should attend an appraisal principles course in order to better understand basic appraisal terminology, the appraisal process, and the volatility of the real estate market. The recently commissioned OST/OAS Appraisal Handbook team is recommending that a training manual be developed that will aid BIA staff in the completion of an appraisal request form; and similarly, one Regional Director is pursuing the possibility that the American Society of Appraisers design a course that would include an introduction to automated valuation methodology (AVM) and an understanding of basic market economic principles.
2. **Prepare Realty Officials to perform administrative reviews.** With proper training, BIA/Tribal Realty Officials could perform administrative reviews where appropriate which decreases the time needed to deliver an approved appraisal report to the requestor.
3. **Create a beneficiary appraisal service survey.** Appraisers need to hear what Superintendents and Realty Officials learn from beneficiaries about satisfaction of the appraisal service provided.



Findings 1 and 2 Longer Term Recommendations

- 1. Differentiate between types of land transactions and identify the appropriate vehicle for determining asset value for each type.**

Establish appraisal thresholds for leases on Tribal lands. Current practice dictates that every business transaction involving Trust lands requires an associated appraisal. While a sale or acquisition may require a formal appraisal report, a land use transaction, such as a lease, may not in most cases. If DOI begins to differentiate between types of transactions, the number of OAS appraisal requests could significantly decline, thus reducing the backlog and assigning appraisal priority to complex, high value transactions.

Appraisal requests should be tracked by type of transaction each appraisal supports (lease, sale, probate, conveyance, other), the dollar size of the transaction, the type of report required and/or the urgency of transaction close. This practice would provide a better tool for management planning and a potential indicator of required staffing levels.

- 2. Develop a land use strategy that includes a schedule of appraisals or studies at regular intervals, approximately every one to three years, that maintains current values on all Trust property.**

The problem lies with implementation of such a strategy, with the appraisal resources currently available. For example, the option to stop servicing transaction-related requests for a period of time so that OST/OAS can institute a new proactive approach is not tenable. However, DOI could start using this approach on a prioritized or selective basis when analysis indicates the results will be viable. The strategy could then be a model for other areas.

Finding 3: The appraisal metric currently in place does not accurately reflect beneficiary service or performance of the appraisal process.

The measurement in place that classifies an appraisal as backlogged is that appraisal request-to-delivery exceeds 90 calendar days. Most Regional Appraisers agree on three primary concerns about the measure:

1. The timeframe remains the same if the service request is for preparing a complete appraisal report or for reviewing an appraisal report already completed.
2. While it is appreciated that 90 days was a best effort at identifying a common measurement point, most appraisals are unique enough that no one timeframe is accurate in the majority of cases.
3. Appraisal requests are often submitted in large batches by Realty Officials, especially during the lease renewal season. Under the current measure, all the appraisals in the batch are due on the same date. In other words, seasonal fluctuations in workload have no impact on the measure.

Although this measure is often an inaccurate indicator of service delivery and an ineffective workload management tool, these backlog volumes are included in the court quarterly report. As a result, approval for an adjustment to the measure could be time consuming.



Finding 3 Longer Term Recommendation

Revise the appraisal performance management measure.

The measure currently in use lends itself to management by output rather than management by objective. As an indicator of beneficiary service, it is reasonable to monitor the appraisal process from a beneficiary's perspective; i.e., from the date a request is made in a BIA, Tribal or OST/OAS Office to the date appraisal information is shared with that beneficiary, normally by realty or agency staff. This would measure elapsed time for the process end-to-end. Currently, the starting point for the measure is the date a request forwarded by BIA or a Tribe is received in the OAS Regional Office, and the end point is the date the appraisal is returned to the requesting office.

For performance measurement purposes, it would be most appropriate to let the Regional Appraiser set the deliverable date for a specific appraisal based on the nature of the request, and backlog the appraisal if that date is exceeded. A significant factor to be considered in setting the deliverable date should include the complexity inherent to the region, such as land type, marketing conditions, time needed to build an accurate comparables database and the currency and accessibility of existing information. This approach would more closely conform to project management practice.

At a minimum, the Office of Appraisal Services should be measured on a 90-day clock that starts from the date a request is assigned to an appraiser, rather than the date a request is received in the Regional Appraisal Office, because many requests are still incomplete on the date received.

Finding 4: The use of contracted appraisers has not delivered successful results in many regions.

As noted in Chapter 3, "Most commercial trusts do not consider it a fiduciary duty to value assets internally, and instead contract this service when needed rather than maintaining their own staff." Although contracting the majority of appraisal work could be effective for Trust management as well, many Regional Appraisal Offices, Tribes and BIA Agency Offices have tried using contractors to perform a significant amount of their appraisal work and have not been successful because they cannot hire fee appraisers who can complete accurate, timely appraisal reports on Trust lands. This finding is substantiated by the following experiences related during the regional work sessions:

- a) Many contractors do not have the requisite knowledge of the unique Tribal laws and/or state and federal legislation that affect the determination of a value on these tracts.
- b) One agency hired contract appraisers, and when no reports were forthcoming, the contractors explained that they were denied access to the necessary DOI files.
- c) One Tribe contracted the appraisal process and intended to use contract appraisers. They could not find any appraisers interested in the work because the Tribe's location is so remote.
- d) The Tribes in one region that have contracted appraisal services report they have not been allocated enough money to pay contracted appraisers to produce all the appraisal reports required by that Tribe and its members. In contrast, if they had not contracted the service,



OST/OAS would be required to deliver all the reports requested, whether there was adequate funding or not.

There are some notable exceptions. The Great Plains Region contracts for as many as 85% of the appraisals completed. And the Pacific Regional Appraiser has been successful employing an operations model that contracts out nearly 100% of the requested appraisal reports. The fee appraisers are hired by Tribes, individual Indians, OST/OAS, municipalities, or other BIA and Tribal programs; and the Regional Appraiser performs the appraisal review. The land base in this region is small and comprised primarily of small tracts used for homesites, which probably contributes to the success of the approach. Additionally, one Tribe in the region that has contracted appraisal services has found an innovative way to supplement the money allocated to them: A fee is collected for every transaction that requires an appraisal and the Tribe uses those funds to compensate a staff appraiser. The practice of charging service requestors is not available to OST/OAS.

Finding 4 Longer Term Recommendation

Develop improved processes for the assignment of appraisal work to contracted appraisers or find alternative solutions to service appraisal requests.

Fluctuations in the demand for appraisal services will remain a factor, and can often be best accommodated by supplementing staff with competent contractors. Given the difficulty most regions have encountered when trying to hire an adequate number of fee appraisal with the requisite knowledge to produce reports on Trust lands, within the funds available, OST/OAS needs to address the problems previously encountered. The Regional Appraisers meet frequently, and because they are the most qualified people to resolve the issue, resolution to the obstacles encountered when using contractors should be a high priority topic for discussion at their sessions. Some process improvements to review might include ways to assist fee appraisers in obtaining the necessary information security clearances, or offering informational seminars to acquaint contractors with the unique conditions that must be considered when completing appraisals on Trust lands.

Additionally, OST/OAS should pursue alternative solutions to meeting the need for Trust appraisal services. Some suggestions include:

- a) Offer summer appraisal internships to college students to entice them into the field. Educational grants in exchange for years of service could also be offered. It would be important that interns be co-located with staff that could serve as mentors.
- b) Work in partnership with Tribes to identify candidates with post-high school degrees. OST/OAS could provide the training and on-the-job experience required for appraisal licensing. The appraiser could then continue working for the federal government, work for his or her Tribe or work as an independent appraiser qualified to contract services back to OST/OAS. Some regions and agencies already have Indian trainees. Those with experience suggest such a program works best in centralized locations so that trainees can interface regularly with mentors.

These suggestions would also help those regions that are finding it difficult to hire competent appraisers from outside the government. Currently, vacancies are frequently filled by transfer from other appraisal programs or agencies such as Fish & Wildlife, Forest Service, Bureau of Reclamation and Bureau of Land Management. Another growing concern is that 47% of the



OST/OAS staff appraisers are eligible for retirement within the next four years, resulting in the need to hire replacement as well as augmented staff.

Appraisal Observations

1. Some Regional Appraisers anticipate an even larger volume of appraisal requests in the near future. For example, as beneficiaries in Alaska get title to their land, appraisals will be required before business transactions involving that land can be completed. Additionally, OST/OAS appraisers believe that the demand for appraisals on Trust lands will increase in general as more beneficiaries use their allotted lands to support a cash rather than a subsistence economy. Similarly, the enactment of the ILCA legislation should also affect an increase in demand as consolidation of fractionated interests increases.
2. Differences in Regional Appraisers' opinions on what constitutes a valid appraisal and what does not need to be reconciled. However, it should be noted that an appraiser is required to personally certify his or her report and the approach used to determine land value and the report form used is at the discretion of the appraiser, as long as the result is in accordance with USPAP standards.
3. Regional Appraisers disagree if buildings on Trust land should or should not be included in the appraisal report. Some believe that if the building is permanently affixed to the land, it should be valued in the real estate appraisal, no matter who owns the structure. Other appraisers believe that leasehold improvements, such as HUD houses, should not be included in the real estate property appraisal because the landowner is not the owner of the structure. In yet other instances, the appraiser leaves the decision to include or not include buildings up to the report requestor. Although the regulation was not produced for review, it has also been suggested that there is a notation somewhere in the federal regulations that denotes all buildings on Trust land as personal, not real property. If that is the case, buildings should be appraised using USPAP Standards 4 and 5, not Standards 1 and 2 that apply to real estate property appraisals.
4. There is no procedural continuity from one contracting office to another. Appraisal contracting should be standardized and the roles and responsibilities for the Regional Appraiser and the Contracting Official should be defined. This issue is being addressed in the revised Appraisal Handbook.
5. A conflict of interest could exist if an individual Indian or Tribe requests an appraisal and the Tribe has also contracted appraisal services. During the regional work sessions, the As-Is Team observed two related instances: (1) A Tribal Realty Official is also the Tribal Appraisal Reviewer and (2) The Tribal Appraiser is paid with both Tribal and Trust funds. A conflict of interest could exist since the appraiser would be working for both the buyer/lessee and seller/lessor in most instances. Although the Secretary of the Interior has identified this potential conflict, there is no self-governance or contracting regulation that disallows the practice.
6. OST/OAS and BIA need to determine who is the official appraisal record keeper; i.e., is it the Regional Appraisal Office or a BIA Agency Office. The official record keeper should store all copies of appraisal reports and work files and be responsible for reconciling BIA and OST/OAS tracking logs. Currently, this role and responsibility varies from region to region.



5.3.5 Surface Asset Management

5.3.5.1 Forest Management Findings and Recommendations

Finding 1: Forest Management Deductions are not collected and/or used consistently across BIA regions. These deposits are used for planned forest development and protection activities.

The United States Code 25 USC 3105 and the associated regulations in 25 CFR 163.25 establish the requirement for a reasonable deduction to be taken from gross proceeds of sales of forest products harvested from Indian forest land. The purpose of the Forest Management Deduction (FMD) is to provide funds to cover in whole or in part the cost of managing and protecting such Indian forestland. As a condition of harvesting forest products under a timber sale contract, permit and other agreement on Indian lands, the FMD is to be collected as a percentage of revenue of the sale (normally 10% of gross proceeds) and ultimately returned to the beneficiary or used by BIA, specifically for forest management, on the Trust land from which it was derived.

The FMD enhances total forest management resources and provides essential budget dollars to Tribes for Trust forest management activities. Regulations state that, barring a waiver granted by the Secretary, the FMD must be taken from forest product sales generating \$5,001 or more in gross proceeds. The deduction from the proceeds is to be routed to OST/OTFM, accounted for as Tribal Trust revenue and set aside in a FMD account for the Tribe's forest management program. The FMD must be utilized according to expenditure plans approved by both the Tribe and the Secretary. The expenditure plans describe the anticipated forest land management activities, timelines, expenditures and the payment method through which funds may be transferred or credited to Tribal accounts from the special deposit account holding the FMD.

Interpretation of the regulation is frequently inconsistent. For instance, certain Tribes in the Eastern Region do not segregate FMD from Direct Pay payments and precludes funds from being deposited into a FMD account. In the Northwest Region, one Tribe calculates FMDs on appraised value rather than actual proceeds from a timber sale, and forwards FMD funds to OST/OTFM only on a quarterly basis. In the Rocky Mountain Region, one Tribe collects the FMD on sale amounts of less than \$5,001, and maintains the funds in a Tribal account without OST/OTFM oversight. Some Tribes collect the deduction but may not use it for its intended purpose, while others do not segregate the FMD from the gross proceeds at all.

Finding 1 Quick Hit Recommendation

Enhance policy statements and related procedural manuals to be more specific regarding the FMD process, requirements and timelines. Updated policy and procedural documents should emphasize the expectations for collection and use of the deductions. In addition, parameters for expenditure plans should be reiterated. In the Pacific Region, the Tule River Tribe and Round Valley Tribes have, with approval of the Secretary, increased FMD percentages, enhancing the total regional forest management resources and providing essential budget dollars for Tribal forest management activities. Best practices within Tribes should be communicated to support the need for, and positive impact of, the FMD requirement.



Finding 1 Longer Term Recommendation

Enhance the 25 CFR 163.25 regulations to be more specific about procedures and requirements of collecting FMDs.

It was reported that many critical forestland management activities are dependent on FMD funds. Stricter monitoring and oversight by DOI should be performed to ensure enforcement of the regulation provisions regarding collection and expenditures of these funds. Monitoring programs could be established to track timber sale and FMD collections, as well as expenditures of those deductions against mutually agreeable plans approved by the Tribe and the Secretary.

Finding 2: Direct Pay scenarios raise significant accountability issues.

In an effort to increase the speed of payments to beneficiaries, 25 USC 3107 and 25 CFR 163 address the concept of gross proceeds payments from forest product sales directly to Tribes. Further discussion of the issues introduced by Direct Pay scenarios for Indian Trust programs may also be found in [Section 5.2.3.1 - Broad Trust Management and Asset Use Stewardship](#).

Official requests for direct payments into Tribal accounts may be made to the Secretary for many kinds of forest product sale payments, such as bid deposits, advance payments on estimated timber value, or FMDs. Direct payments are only authorized by the Secretary's approval upon the request of a Tribe. (Individual allottees may not receive direct payments from forest product sales.) For direct payments, the Tribe must designate either an escrow account at a Tribally-designated financial institution or a Tribal depository account. In order to maintain fiduciary responsibilities, the direct payment regulations dictate that all Direct Pay scenarios must provide for "written verification that all required deposits, payments, and disbursements have been made." Direct Pay is widely employed for forest product sales on Tribal lands; however, a weakness exists in the Secretary's ability to verify the accuracy of payments and disbursements.

A specific procedure, format, and schedule for written verification of the appropriateness of a purchaser's payments and the subsequent disbursement of those funds are not delineated in the regulations. In the Pacific Region, the BIA forestry program has entered into Memorandums of Understanding (MOUs) with the Yurok, Tule River and Round Valley Tribes regarding direct payment verification, and this has enhanced the DOI Line Officials' ability to ensure that federal Trust responsibilities are being met. The Trust Principles established in the 2000 DOI Departmental Manual state that the Department has a Trust responsibility to "*confirm that Tribes [that manage Indian Trust assets pursuant to contracts and compacts]...protect and prudently manage Indian Trust assets*". Appropriate and timely information regarding direct payments is exchanged in much of the Western Region. However, there are a significant number of instances where Direct Pay arrangements have been made by Tribes, without providing for adequate DOI oversight. Staff from the Eastern, Midwest, Northwest and Rocky Mountain Regions have expressed such concern.

In Direct Pay scenarios, uncertainties often exist regarding receipt of advance or bid deposits, gross proceeds of forest product sales, and ultimate disbursement of proceeds to interest-owners. Some Direct Pay scenarios exist without memoranda in place between BIA and Tribes, or with informal agreements regarding DOI oversight. Uncertainties pose a risk to the Secretary's



fiduciary responsibility to both Tribes and individual Indian account holders. For further discussion of account holders' rights protection, please refer to [Section 5.2.3.2 - Communication and Fiduciary Role](#).

Finding 2 Quick Hit Recommendation

Consult with Tribes to enhance policies and manuals. The enhancement should include clear and specific roles, procedures, formats, reporting and schedules for Line Officer oversight of both Direct Pay programs and Compacted or Contracted Tribal forestry programs. Fiduciary obligations for DOI oversight can be included in a standard Memorandum of Understanding that articulates how and when DOI and the Tribes must collaborate in order to promote self-governance without putting at risk the Line Officer's obligations to the Trust.

Finding 3: Some Compacted and Contracted Tribal forestry program processes raise significant accountability issues.

Forestry program revenue accounting and forest product sale contract compliance procedures and regulations have not been finalized relating to new Compacted and Contracted Public Law 93-638 amendments. Ambiguity exists in the code and the regulations are incomplete. As a result, DOI field personnel must interpret and comply with the contracts as best they know how. Because of the sensitivity of the relationship between BIA and Compacted or Contracted Tribes, Line Officials often hesitate to demand thorough accounting and contract compliance documentation.

The size of the compacted and contracted activity in forestry is substantial. 31 self-governance Tribes operate their entire forestry program and six Tribes operate a portion of their forestry program. 26 Tribes have PL 93-638 contracts for operating their entire forestry program and 28 have PL 93-638 contracts for operating a portion of their forestry program.

Many Tribes have excellent forestry programs and good relationships with BIA forestry staff, but information flow between Compacted or Contracted Tribes and BIA is not always handled in a consistent and comprehensive manner. The Hoopa Valley Tribe and the Nez Perce Tribe are examples of Tribes who have established strong forestry programs with good collaboration with their BIA counterparts. In Alaska, however, BIA Agencies are not involved in forest management, so Alaska Natives must collaborate directly with the BIA Regional Office. This arrangement may hinder oversight due to the geographic distances involved.

Finding 3 Longer Term Recommendation

Enhance policies and manuals into future PL 96-638 compacts and contracts.

Standardize oversight clauses to clarify expectations between Tribes and DOI Line Officials regarding forestry program collaboration. With consultation from the Tribes, standard language should be introduced that promotes Tribal control and self-determination while at the same time ensuring the Secretary's obligation to provide oversight and review of Indian Trust asset



management programs. Direct Pay audits with formal reconciliation procedures must ensure that beneficial owners receive, in a timely manner, all of the Trust revenues they are due.

Finding 4: There is a dangerous level of forest “fuels” on Indian lands.

Resulting wildfires affecting Tribal reservations and individual Indian land can be catastrophic economically and culturally. A catastrophic forest fire on rich timber Indian lands may decimate a Tribe’s or individual Indian’s financial position for generations.

Two distinct factors have worked together to produce dangerous forest “fuels” on much of Indian forested lands, as well as within public forests. Better monitoring and wildfire alert systems have combined with more sophisticated fire-fighting capabilities and faster response times of crews in putting out wildland fires. Secondly, there has been a widely held perception that all forest fires should be extinguished as a means of ensuring the best stewardship of the environment. Environmental protection awareness has influenced and benefited national forest management policies for decades. However, successful fire suppression and environmental protection controls have contributed to the unintended forest management concern of dangerous fuel loads.

Because controlled burns to reduce fuels levels can only occur under certain conditions, foresters rely on environmental indices and the condition of natural fuels to indicate a “window” or opportunity for relatively safe burns to clear underbrush and small trees to reduce forests fuels. These “windows” are constrained by air quality, climactic conditions, and the weather’s impact on forest fuels in areas targeted for such fuels reduction. Regulations have furthered reduced the “windows” for forest protection activities. For instance, the Clean Air Act addresses the release of “particulate” matter into the air that controlled burns produce. However, wildland fires release exorbitant amounts of particulate matter into the air and create a much more significant air quality concern. As an example to illustrate the problem, in the Eastern Oklahoma Region, BIA manages to accomplish ten to fifteen controlled burns per year, but they experience two hundred to three hundred unplanned fires per year.

The Endangered Species Act also has extensive requirements about obtaining Biological Opinions and necessary permits prior to conducting fuels reduction activities. Consequently, regulations have inadvertently delayed or eliminated certain fuels reduction efforts on Indian lands. For instance, it can take three months to get an Endangered Species Act clearance in order to conduct fuels reduction burning for two days. Because timber sales on reservation lands have followed much more slowly than public and private timber clearing, often Tribal and allotted lands become habitats for species displaced from surrounding property. Burden is sometimes placed on Tribes to purchase other lands for habitat development for those species prior to being granted permission to sell their own timber.

The catastrophic wildfires experienced in the recent past have caused legislators to review national forest management policies. Recently, the President announced plans to curtail elements of the environmental review process in an effort to increase the number of controlled burns to reduce forest fuels and avert another year of raging wildfires. Currently, the plan applies to 10 national forests. But there is a significant difference in the general impact of wildland fires on public property and those on Indian lands. Forest reclamation and replanting on public lands is a cost borne by the entire U.S. tax-paying population, and despite their devastation, such fires



rarely impact the economic well-being of citizens directly. Often, this is not the case on Indian lands. Wildfires affecting Tribal reservations and individual Indian land can be catastrophic *economically* and *culturally*. A catastrophic forest fire on rich timber Indian lands may decimate a Tribe's or individual Indian's financial position for generations. In addition, certain endangered forested lands may be considered sacred or culturally significant to the people.

BIA and Tribal foresters are concerned that forest protection activities on Indian lands have been hindered by the growing environmental concerns and forest management policies of the last half-century. Fuels reduction work continues to be deterred due to tight constraints on controlled burns. BIA and Tribal foresters can resort to the alternative fuels reduction method of "chipping" (allowing faster decomposition of the wood in question), and do so about 10% of the time. However, this alternative is both time-consuming and relatively expensive, maybe 10 times as expensive as a controlled burn according to foresters in the Pacific Region. This "mechanical" method is less economically feasible, because it increases workload, cost and duration of forest protection activities, and can only be accomplished within relatively flat forests, as the chipping equipment cannot be maneuvered on steep forested lands. Added to its detractions, mechanical fuels reduction requires forest felling and chipping teams. This type of specialty staffing in many regions has been problematic, with BIA and Tribes competing for resources with states for fuels reduction technicians. In certain regions like Alaska, BIA has made a concerted effort to request help from other agencies to reduce risk on Trust lands.

Finding 4 Longer Term Recommendation

Give special consideration to the impact on Indian lands of new and revised national policies, laws and regulations.

Cost-efficient and timely fuels reduction on Indian forested lands is essential to protect Trust assets and the unique cultural concerns and financial positions of Indian beneficiaries. Forest management budgets should be adjusted to compensate for the increased demand for mechanical fuels reduction.

Forest Management Observations

1. The Indian Trust Forest Management process is well understood across BIA regions and Tribes and works in a generally consistent manner. Relatively few process variations were encountered, with most focusing on FMDs and Direct Pay scenarios.
2. There is a lack of common technologies supporting Trust forest management programs. Forestry staff is required to analyze reservation-wide Forest Management Plans, as well as specific tracts and stands targeted for timber harvest, forest protection or development. Program staff has difficulty in accessing common land records and plans as well as accurate ownership information.
3. There are significant regulatory requirements that affect BIA and Tribal forestry program staff in their efforts to provide Trust forest stewardship and return on assets. Aside from the Endangered Species and Clean Air Acts mentioned above, numerous other regulatory requirements and Executive Orders impact forest management. These include cultural resource protection, water and related land resources, wildlife, public lands, open space, recreation, marine resources, transportation, noise reduction, and resource recovery laws. The



- burden of meeting all these regulatory requirements dramatically increases costs and reduces timeliness and effectiveness of Indian Trust forest management.
4. BIA and Tribal forestry programs are grossly under-funded compared to other federal and private forestry management programs. The National Indian Forest Resources Management Act, Title III, Public Law 101-630, requires that the Secretary, in consultation with Tribes, obtain an independent assessment of the status and management of Indian forests. The study is conducted every 10 years. The 1993 study conducted by the Indian Forest Management Assessment Team (made up of seven nationally recognized forestry experts) documented significant findings that are still voiced as concerns today. According to the study, Indian forestry programs fund approximately 60% per acre compared to national forestry programs for direct timber production, and private forests receive almost double the Indian budget. The latest study, currently underway, is expected to confirm the continued disparity in Indian forestry funding.
 5. It is increasingly difficult to hire qualified and experienced forest management professionals into BIA and Tribal forestry programs. According to the same study conducted by the Indian Forest Management Assessment Team, pay grade levels for BIA forestry staff are lower than equivalent positions in BLM and the U.S. Forest Service, yet due to budget disparities, BIA staff carries greater workload. New foresters are not familiar with BIA regulations, policies and systems.
 6. Arson is a major concern and cause of wildland fires on Indian lands and reservations.
 7. Forest Management Plans for forests require extensive documentation collection and analysis, as well as the concurrence or approval of numerous federal, state and Tribal agencies. Collecting the required documents and opinions can range in duration from one to six years. A Forest Management Plan covers a 10-year period and it can often take BIA and the Tribes working together up to 10 years to develop the plan and obtain Tribal and DOI approval.



5.3.5.2 Range Management Findings and Recommendations

Finding 1: Land condition monitoring and status reporting is limited, reducing the ability to perform effective rangeland planning and management.

Periodic inspections of range conditions, use, and financial compliance are conducted. These reviews may be scheduled, but the most frequent triggering events are receipt of complaints, and turn-in or turn-out dates (when livestock are moved on or off the property). These events provide convenient timing to assess contractual noncompliance stemming from trespass and overstocking (grazing more animals than prescribed through the permit).

Additional monitoring and reporting of availability and condition of forage; precipitation and water access; soil inventories including composition, moisture content, etc. are all deemed as valuable information essential to good planning and management of the rangeland. At a minimum, annual range utilization surveys should be conducted and compiled into an electronic format for reporting and retrieval. This type of information can be used to revise stocking rates (the type and number of animals per acre, or acres per animal, for the given land conditions, to be allowed under the grazing permit). Such monitoring and reporting is not conducted consistently, and performed infrequently as resource availability allows. Some BIA Agencies maintain sample plots of land within Range Units, which are monitored on a regular basis, but most have not done thorough evaluations of land and forage condition in years. Many reservations, Navajo in particular, have not conducted a comprehensive update of carrying capacities since the 1930's, and only partial updates of soil inventories and range surveys since then.

The lack of available skilled personnel, the budget and time required to conduct these assessments of land conditions, generally limits the information and level of detail at which prudent rangeland planning and suitability assessment can be performed. Carrying capacities of the rangeland were set on a range site to range site inventory of the rangeland, decades ago. Stocking rates are set for a Range Unit at a percentage of the sum of the carrying capacities of the range sites in the Range Unit. Given the time and data available, many BIA offices will increase or decrease stocking rates at a reservation or regional level, via blanket percentage adjustments, which are then applied to the previous stocking rate. This is a broad, "shotgun" approach, and does not address previous overgrazing on a given range site, percentage and type of weed infestation, forage level and forage seasonal growth characteristics, change in availability of water, and other Range Unit or range site-specific characteristics.

Finding 1 Quick Hit Recommendation

Deploy regional "tiger teams" of skilled range conservationists to establish a prioritization schedule for monitoring and reporting on rangeland condition.



Finding 1 Longer Term Recommendations

1. Implement a GIS-based rangeland management information and reporting system.

Coordinate with leading Tribal efforts to integrate and share information to develop comprehensive views of all rangeland under Trust jurisdiction. See Section 5.2.3.1 – Broad Trust Management and Asset Stewardship.

2. Initiate consultation and workshops with Tribes, sharing leading animal husbandry and land management practices, assisting in counseling and problem solving with them.

As part of this effort, develop an information sharing program, and provide incentives for operators to provide key rangeland management information to the Tribal and BIA range specialists in exchange for the workshop and counseling efforts. For additional detail, see the Consultation Model discussion in Section 5.3.2 – Beneficiary Services Findings and Recommendations.

Finding 2: Rental values are not established consistently across locations for use in grazing permits, or in calculations of distribution advice.

A generally recognized requirement for good rangeland management practice and getting fair market value for the beneficiaries is the performance of an appraisal to serve as the basis for development of the rental value for the terms of the grazing permit. This is true regardless of the method of selecting a permittee, since the appraisal serves as key input for a bid process just as it serves as a starting point for a negotiated permit.

The level of detail at which the appraisal is requested and performed may vary significantly. Some are done at a regional level for a minimum grazing rental rate per AUM (animal unit month). Others are Range Unit specific based upon the characteristics of that particular land, the types of animals being grazed on the land, the availability of water, and the distance or accessibility to markets for the animals. Rangeland appraisal practices are discussed further in Section 4.3.5.3 – Range Management.

The second major variability is the method of applying the rental rate for Range Units (aggregations of a number of tracts of land, each having their own ownership) to the calculation of the distribution advice. In basic terms, this is an apportionment of the revenue to the landowner interest beneficiaries. Revenue is received at the aggregated Range Unit level. Some agencies base the apportionment calculation on acreage, dividing the revenue by the number of acres to develop a “blended rate” and this rate is then multiplied by the acreage and percentage of ownership-interest to define the amount for each beneficiary; e.g., Great Plains Region. Other agencies base the apportionment calculation on the productivity of each specific tract via an AUM number, such as the Rocky Mountain Region.



Finding 2 Longer Term Recommendation

Implement a system that supports the defined approaches for appraisal, billing, collection, non-Trust funds disbursement, and distribution advice preparation.

There is a current DOI initiative underway to review the revenue apportionment approach. Additionally, the events triggering rangeland appraisal should also be standardized. The specific policies and calculations required for the different combinations of ownership as they impact the revenue collection and procedures for non-Trust fund disbursements and distribution advice preparation should also be assessed. (See [Section 5.2.3.1 – Broad Trust Management and Asset Stewardship](#).) The Inter-Agency Procedures Handbook should be updated to reflect the determinations of these studies, and training sessions conducted to ensure consistent deployment.

According to the definitions and design reached by these initiatives, provide a system that will enforce a common approach and method of calculation, as well as integrate the data between this process and the other related Trust processes; e.g., Appraisal and Accounting.

Deploy a spreadsheet template with appropriate, protected-cell calculation formulas, and separate worksheets for input of relevant information necessary to calculate distribution advice. This will greatly improve consistency for those locations without access to a major regional computer system to support this process. In conjunction with this, the key automated systems should be maintained to utilize common approaches and common calculations (e.g. IRMS, MAD, REM/RES). See [Section 5.3.5.5 – Water Management](#) for a related recommendation.

Finding 3: There is wide variation in how often to obtain “Authority to Grant” grazing permits and the approaches used in approving the authority.

The process to obtain “Authority to Grant” seeks beneficiary approval (on multiple-ownership tracts, or Range Units aggregated from tracts with different ownership), to authorize BIA to issue grazing permits on the land in which they have ownership. Land which is 100% Tribally owned bypasses this process.

Where land is heavily fractionated or checkerboarded, this process creates a high volume of labor-intensive mailings, forms, and compilation of results. Many BIA Agencies with such a land base commonly issue between 5,000 to 20,000 notices or consent letters in a single permit-expiration year. Where automated systems exist to generate the Authority to Grant notices, the workload is substantially reduced.

Due to the onerous nature of the volume of paperwork for this activity, BIA regions and agencies have utilized different interpretations of how often this process must be performed, and what event or criteria triggers its performance.

The most common interpretation is to perform the process upon an impending expiration of the current permit period, primarily where there are large, contiguous blocks of rangeland all expiring on a common date for a given reservation. In other geographic areas, where land is more fragmented, or there are not one or two blocks of permits with common expiration dates a wider



variety of approaches are used. Some agencies have performed the authority process once, and deem it adequate, either in perpetuity or until a majority of the ownership-interests change. Others trigger the event only upon probate, sale, or other ownership change that will potentially reduce the approval level below the statutory or regulatory level of majority required.

Finding 3 Longer Term Recommendation

Include a request for the Authority to Grant as part of an annual report to each beneficiary, including it only upon the appropriate triggering event.

Conduct a short-term assessment and procedure definition initiative, including participation from the different types of land bases and ownership profiles. Evaluate various approaches to authority to grant strategies and determine preferred or best practices to incorporate into regional manuals if they fit local situations. Eliminate separate consent processes, and use only the Authority to Grant. Some of the Agencies chose to include the separate consent to provide additional information such as expected rental rates or an estimated distribution per beneficiary.

Provide a multi-channel method of response – through the web, via call center, or mail. This should be implemented and integrated with the deployment of the single ownership system and realty management system as described in [Section 5.2.3.3 – Technology and Information Sharing](#), and provide for an automated calculation and summation of the approval or consent according to the 25 USC 2218 (ILCA) majority consent requirements.

Range Management Observations

None.



5.3.5.3 Long-Term Leasing Findings and Recommendations

Finding 1: In some instances, long-term leasing of Indian lands is done on a reactive rather than proactive basis, establishing an environment in which DOI may not be achieving highest and best use of land or greatest return on assets for the beneficiaries.

The general goal of long-term leasing on Indian Trust land is to provide fair return on Trust assets for beneficiaries in accordance with the beneficiaries' intended use of those assets. BIA realty staff develops long-term leases for most commercial leases as well as residential or homesite leases. In general, the process for Long-Term Leasing begins with planning for a land base or specific tracts of land.

Where possible, BIA staff provides land asset records, owner-interest information and technical expertise to support a respective Tribe's participation in the process. There are several BIA regions and agencies that are particularly adept at collaborating with Tribes on land use planning. For a more extensive discussion on the need for DOI leadership in Trust-wide comprehensive land use planning, please refer to [Section 5.2.3.1- Broad Trust Management and Asset Use Stewardship](#).

The Northern California Field Office works with Tribes proactively on pre-leasing meetings to familiarize Tribal realty staff and Council Members with the BIA leasing process and its associated regulations and requirements. In the Western Region, the Fort Yuma Agency regularly tracks upcoming expiring business leases in order to pursue lease renewals or new business leases.

While realty staff in these regions, agencies and Tribes performs proactive land use planning to develop long-term leases, they do not represent the majority of BIA realty operations. Severe shortages in realty staff at BIA Agencies, and sometimes a lack of experience or skill sets, contribute to realty operations that by default function in a reactive mode. All realty operations respond to leasing opportunities once applicants or candidates have been identified and demonstrate an interest in participating in a long-term leasing arrangement on Trust lands. BIA and Tribal realty staff often work together to proceed with long-term leases on Tribal lands. In virtually every region, BIA realty staff have some form of documented procedures for applicants to follow in obtaining a lease, and often have several versions of standard homesite and commercial leasing packages and associated leasing fee schedules.

Finding 1 Longer Term Recommendations

- 1. Establish economic development strategies targeting the most valuable lands across the Trust for long-term commercial leasing and land development.**

Such strategies should be developed in conjunction with any Tribal IRMPs that may be available or in development. As part of overarching strategies to ensure highest return on Trust assets, and in accordance with Tribal or individual beneficiary intent, work with Tribes to identify appropriate leasing opportunities and potential leasing candidates. When identifying such lands, eliminate from Idle Land Surveys real estate that is not to be



developed based on beneficiary indication that such land be excluded for ceremonial or other reasons.

At a minimum, develop marketing programs as commercial Trusts do to advertise or market lands available for commercial leasing, using all available resources including the Internet. Capitalize on community outreach opportunities to market lands to local communities or national developers. In order to accomplish this, a complete inventory of the available land for lease activity must be completed.

2. Develop a parcel tracking system.

Once the available lands have been identified as potential lands for producing Trust revenues, develop a parcel tracking system, which helps realty staff monitor leased or idle tracts, as well as long-term lease expiration schedules for proactive renewal, terms renegotiation or new leasing actions. Identify land for which leases are expiring within the next 12 months, as required by the Inter-Agency Procedures Manual. Parcel and lease tracking capabilities should be included in the performance management tool (such as a dashboard that indicates to realty staff when revenue-producing land is nearing lease expiration) recommended in Section 5.2.3.1 - Broad Trust Management and Asset Use Stewardship, earlier in this chapter.

3. Develop a realty training program.

In an effort to underscore the value of the realty function of the Indian Trust, and to enhance the skill sets of BIA Realty Officers and Realty Specialists, develop a realty training program that teaches basic Indian Trust and commercial realty principles. The training program should also provide highlights of other disciplines that affect BIA realty commercial leasing, including corporate law, bankruptcies, and environmental law. Also, consider additional education in the form of funding realtor's certifications from state Realtor's Exams for lead Realty Officers at key agencies. In conjunction with these efforts, establish a DOI internal consulting model that promotes mentoring and consulting from within DOI's extensive pool of expertise across all bureaus, agencies and services. To begin, develop a contact list of DOI experts in certain fields (for instance, certified surveyors and licensed appraisers), with appropriate contact information to facilitate collaboration, knowledge sharing and leveraging of appropriate DOI expertise to support field representatives in performing fiduciary responsibilities. (See Section 5.2.3.2 – Communication and Fiduciary Role, Quick Hit Recommendation, for further detail.)

Finding 2: Lack of standardization in Title recordation causes inconsistencies in Trust records management and undocumented encumbrances regarding land use.

Within the bounds of regulations there are several means of granting Indian Trust land usage. For long-term use scenarios, leases and permits are two of the most common ways of granting use on Tribal or allotted lands. Although the regulations account for numerous types of encumbrance instruments, there is little documented instruction that indicates the appropriate decision-making process for selecting a lease versus a permit versus making an assignment, etc. Both BIA and many Tribes regularly use long-term commercial and residential leases as standard encumbrance vehicles. However, it is also common to use long-term leases on allotted lands and Tribal



assignments on Tribal lands when the candidate is taking possession of Indian lands as a residence.

The following serves as an example of regulatory/procedure inconsistency. According to 25 CFR 162.104, individual Indians who own 100% undivided interest on a tract of land may take possession without a lease or DOI approval. But the associated portion of the Inter-Agency Procedures Handbook specifically calls for a lease, even in the case of 100% ownership by the lessee landowner. To complicate matters, individuals are often not aware that obtaining a lease or permit for land use may be required. When deciding whether to use a commercial long-term lease or a permit, both BIA Agencies and Tribes may select different terms and durations. But because appraisals are not required for obtaining permits, often permits are granted rather than leases because the process is faster.

When entering into negotiations to allow commercial enterprises on Trust lands, BIA generally enters into long-term leasing agreements. However, as in the Eastern and Midwest Regions, Tribes have decided to allow commercial use of Tribal lands without a lease or any other record of encumbrance shared with the Department. (Tribes often enter into contractual agreements with commercial entities, but may not forward those documents to BIA regional staff.) Similarly, some landowners are conducting commercial operations on Pacific Region allotted lands without a lease; in the Western Region permits are not required for any commercial entity operating on allotted lands. When an encumbrance vehicle will be utilized in granting business use, the lack of defined criteria for selecting leases or permits results in identical land use grants with different encumbrances vehicles across the Trust. For instance, some Tribes will negotiate with third parties for permission to install cell towers using revocable use permits (as in Navajo), where others enter into formal long-term leases (as at the Yakama Agency in Northwest). Where Tribes are facilitating the development of services and facilities that benefit reservation life (places or worship, schools, day care centers, etc.), some grant use by Tribal assignment, others by long-term leases, others by permit, and still others without encumbrance vehicles.

Maintaining accurate and comprehensive land use records is one of the tenets of the government's fiduciary obligation to the Indian Trust. However, even after an encumbrance vehicle has been selected for long-term land use, formal recordation of that encumbrance on the land is practiced inconsistently. There does not appear to be a standard practice of either recording the granted land use (by lease or permit) at the local level, or submitting the documented encumbrance to the area LTRO/TSO. Customary and historical use, non-expiring revocable use permits and Tribal land assignments are generally only documented at the local level in area office databases.

Regarding permits, inconsistent recordation has made it increasingly difficult to determine Trust-wide whether or not revocable use permits and rights-of-way have been obtained by entities/companies that have, for example, fiber optic networks, power lines, cell towers, roadways and railways utilizing Trust land assets. This may result in improper land use, inaccurate land availability reports or delays in obtaining long-term leases.

Inconsistency in how and where land use is being recorded introduces risk. Failure to maintain a comprehensive set of land use records—either at the local level or at the LTRO/TSO—contributes to improper recordation of land status, discrepancies regarding encumbrances potentially affecting the income of multiple beneficiaries (and potentially impairing fiduciary oversight), and an inability to control and ensure appropriate Trust land use.



The recordation problem does not end even with properly recorded permits and leases. Almost all regions and agencies acknowledged that many long-term leases are allowed to expire without formal renewal or renegotiations that would ensure optimal return on the trust asset. Navajo Agency staff, for example, estimates that there are tens of thousands of expired leases still on the records. Lease cancellations should also trigger the removal of an encumbrance, either on local land use records or on Title, as appropriate. Workload, staff shortages and realty operations backlogs are causes for less than optimal management of lease expirations, renewals and renegotiations.

Finding 2 Quick Hit Recommendation

Create standard procedures and decision criteria for selecting appropriate encumbrance vehicles (lease, permit, assignment, informal agreement, etc.). Develop a common nomenclature and standardize lease terms and conditions, across BIA regions. Develop a clear communications strategy so that all realty officers and specialists are aware of the clarifications and standard tools at their disposal.

Finding 2 Longer Term Recommendation

Clarify regulations that dictate which encumbrances must be maintained at the local level, and which must be recorded at the LTRO/TSO.

It is recommended that transactions be recorded as close to the point of service as practical. Land use on Trust assets needs be recorded in a consistent manner without necessarily being recorded as a formal encumbrance on Title; one of the large commercial Trusts interviewed for this effort did not record Trust land uses on Title. Further recommendations and discussion of related issues are provided in Section 5.3.2 – Title Services, Acquisition and Disposal Findings and Recommendations.

Finding 3: Approaches to obtaining beneficiary consent and the definition of what constitutes “consent” vary widely.

According to 25 CFR 162—Leasing and Permitting, leases on Trust land can be granted by the Secretary under very special conditions. Normally, Beneficial owners (or their legal representatives) and Tribes (or Tribal enterprises) “grant” leases on Indian Trust lands. As a matter of procedure, the granting of long-term leases or permits is achieved through what is commonly referred to as the process of *obtaining consent*.

Tribes and Tribal enterprises may grant leases on Tribal lands directly, or may provide the Secretary with written notification of the BIA Line Official’s authority to grant leases on behalf of the Tribe. For instance, the Pima Agency enters into commercial lease agreements on behalf of the Tribe, based on an overarching Tribal Resolution granting such authority. (There are rare cases in which agencies act on behalf of Tribes without blanket Resolution authority). The majority of Tribes are well-integrated into the long-term leasing process, including appropriate provisioning of consent for leases on Tribal lands. However, the Indian Land Consolidation Act (ILCA) as amended in 2000 has impacted the definition of consent for fractionated interests on



Indian lands. Previously, majority owner interest was considered to “bind” minority interests. The new requirements apply a scale of owner-interests in determining consent needed to grant land use, which must still be greater than 50 percent.

The problem exists in the sporadic application of the ILCA consent requirements. A majority of BIA regions may not be following ILCA requirements for obtaining consent and many regions and agencies reported using the older “owner-interest majority” as a means of determining beneficiary approval of a lease. Under that approach if enough people representing the majority of interests in a tract approved of the lease, BIA staff considered the lease permissible to the landowners. Certain offices used a form of “implied consent,” whereby a consent letter regarding a potential lease is mailed to known owners and if no owner responds with an objection to the lease. Within 90 days, BIA staff considers the lack of feedback as consent to the lease in question (as in Alaska, the Northwest, Western and Pacific Regions). Superintendents may sign consent forms for absentee owners if no response from the landowner is received. The Navajo Nation requires the additional consent of historical land users, any grazing permittee or the grazing committee (if applicable). Elsewhere, verbal or informal consent is considered sufficient, especially in cases of owner use of land. In some situations, if land is going to be used in line with “historical use,” no new consent procedure was initiated. Subsequently, long-term leases may be challenged and appealed.

The recordation of consent also varies. Some regions include signature pages attached to the lease with a certain number of signature blocks. Others mail separate consent letters that are returned by beneficiaries and retained as evidence of consent. Still others have developed more formal consent forms for commercial or residential leases. Occasionally, BIA puts the onus for obtaining and documenting consent on the long-term lease applicant, with guidance from realty staff as to the interest owners and their addresses.

The Central California Agency and the Northern California Field Office not only identify and communicate with fractionated interest owners, but realty officers there developed educational materials on “Co-Owner Rights” that they provide to interest owners at the time of obtaining lease consent. The Yakama Agency also makes great effort (with repeated contact) to notify owners of long-term leasing opportunities. The process of obtaining consent, especially for severely fractionated interests on allotted lands, can be lengthy and cumbersome. Obtaining consent is complicated by inconsistent ownership records, and is sometimes obtained without benefit of a certified TSR. These issues only add to the risk of Indian lands being encumbered improperly.

Finding 3 Longer Term Recommendations

1. Develop standardized consent forms that reinforce ILCA consent requirements.

Ensure that regulations in 25 CFR 162 Subparts C and D to be published in 2003 clarify procedures for determining which encumbrance vehicles should be used in each circumstance. Address standard mechanisms for documenting consent (Power of Attorney, Lease signature blocks, letters of consent, etc.). It may be appropriate to include conditions for which “permission to proceed” is authorized prior to lease approval.



2. **Institute an auditing procedure.**

After regulations are published that clarify appropriate mechanisms for granting land use and recording consent, institute a monitoring or random auditing procedure to ensure the consistent application of the regulations. To ensure consent is obtained from the rightful owners, provide realty officers negotiating long-term leases with online access to certified TSR information. As a result, it would help eliminate ownership confusion, increase effective communications with Beneficiaries, and reduce the elapsed time necessary to obtain consent required to encumber Trust lands. Further discussion can be found in [Section 5.2.5.4 – Agricultural Leasing Findings and Recommendations](#) and [Section 5.3.5.2 – Range Management Findings and Recommendations](#).

Finding 4: Enforcement of long-term lease terms or revenue collection for third-party leases, along with trespass violations on Indian lands, is problematic due to lack of BIA enforcement capability.

One of the Trust principles held by the Secretary of the Interior clearly stipulates a commitment by the Department to “enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust...lands.” The responsibility for enforcement of long-term leases is also laid out in regulations 25 CFR 162.108 that stipulates the Department has the responsibility to ensure lease payment obligations are met (including direct payments) or prompt collection or other enforcement actions must be taken. All operating requirements must be enforced through inspections or in response to Indian landowner complaint. In like manner, trespass (i.e., entities operating on Indian lands without a lease or permit) must be addressed. In severe cases, emergency actions must be taken to preserve the value of Trust assets. Parts 612 through 619 of the same regulation delineate DOI responsibilities to address lease violations with negotiated remedies, late payment penalties, delinquent rent payment recourse, lease cancellation for cause, withholding of available bonds, eviction and other remedies. Furthermore, the Inter-Agency Procedural Handbook (currently in draft) provides supporting guidance in [Section 12—Lease Compliance and Enforcement](#).

Realty offices across BIA regions are constrained with limited staffing and funding levels and high workloads. Under these situations, regular monitoring of long-term lease compliance is one of the practices that suffer. Most regions reported that lease compliance monitoring was done only in reaction to a landowner complaint or in response to situations where staff becomes aware of problems haphazardly. Both the Navajo Nation and BIA Navajo Regional staff indicated the prevalence of this practice—except regarding their active monitoring of financial compliance on commercial leases.

With the institution of Direct Pay scenarios, BIA has even less insight into potential problems. Beneficiaries are at the forefront of collecting and accounting for Trust revenues, often without knowing regulations or even the payment terms, schedules and receivable amounts expected from a lease from which they are due revenue. Regardless, Direct Pay is the preferred method of collection and distribution of funds associated with long-term commercial leases on Trust land. However, some beneficiaries with Direct Pay terms on commercial leases have been subjected to delinquencies. For example, the Navajo Nation estimates a 35% delinquency rate for commercial leases on Tribal Land. Often in such situations BIA is not requested to intervene and enforce the



lease payment delinquencies until the Tribe or landowner has exhausted all other options for collection.

There are positive examples of agencies actively engaged in proactive monitoring or compliance enforcement. The Colorado River Agency in the Western Region notifies lessees from one year to six months prior to lease expiration to elicit renegotiation of terms. Along with their colleagues at the Fort Yuma Agency and the Rocky Boy's Field Office in the Rocky Mountain Region, they also modify all long-term leases on a five-year basis for incremental rental payment increases to ensure fair market return on assets. The Chemehuevi Tribe in the Western Region has reduced their period of performance on commercial leases to a single year for the same reason. The Fort Yuma Agency is also a leader in performing routine inspections of all long-term leases. The Southern and Central California Agencies take a proactive approach to dealing with trespassers. They attempt to resolve the matter by entering into lease agreements with the offender to negotiate legal use of the land, and a significant number of leases result from this practice.

One difficulty is that enforcement actions often require significant staff time. The Navajo Nation and their BIA colleagues estimate that 1% of their 90,000 homesite leases require remediation, and 35% of their 250 commercial leases on Tribal lands require enforcement actions in response to delinquencies. In the Western Region, realty staff estimates that it can take three months to resolve one non-compliance issue. Trespass is another significant concern across Indian country. The Colorado River Agency, as an example, is currently involved in litigation for 121 issues of non-payment by non-Indian land users residing on Trust land.

The Southern California Agency expressed concern over the limited lease enforcement power realty staff actually wields. Realty specialists monitor leased lands and document relevant findings in letters submitted to and reviewed by the Solicitor's Office—but little enforcement action usually results. BIA also relies on sister agencies like the EPA, when compliance concerns are a danger to the environment. Occasionally, BIA realty staff must request armed security escorts from Tribal police or local law enforcement officials to even assess trespass or other compliance issues. In many areas, local law enforcement will only comply with such requests if they are convinced that the physical safety of an individual is at risk.

Pacific Regional Office staff pointed out that BIA lease compliance is under the jurisdiction of civil law. As the primary enforcement arm of the federal government, the Department of Justice focuses almost entirely on criminal cases where large dollar values may be recovered. In that region there are a large number of instances where rental payments are in arrears, and the filing for bankruptcy by commercial businesses has significantly impacted long-term leasing. In these situations, BIA must have the Solicitor file a civil complaint in court as a creditor against the commercial enterprise. In addition, the bankruptcy process must be monitored closely to ensure the securing of funds.

Finding 4 Quick Hit Recommendation

BIA should consider recording monetary liens against lessees if rental payments are delinquent. The liens should be recorded in County records so at a minimum the delinquencies can be reflected on the lessee's credit rating. BIA should develop a master list of lease operators with a history of delinquent payments or other failures to comply with lease terms. This list should be shared across regions at regular intervals.



Finding 4 Longer Term Recommendations

1. Establish authority to address trespass enforcement.

Because of the pervasiveness of concern expressed over the lack of staff to perform lease monitoring, and the lack of enforcement capability on lease compliance resolution, a review should be conducted to identify and inventory commercial leases that produce revenues above a threshold value, or the operation of which produce hazardous conditions or materials requiring extensive but critical reclamation activities. Oversight of these target leases should be elevated for priority monitoring and enforcement.

It appears that revised or new statutory and regulatory authority is needed to address the enforcement activities of trespass on non-leased property. (See Section 5.2.3.1 - Broad Trust Management and Asset Use Stewardship, for a general discussion of Trust asset protection and the realty staff's recourse in soliciting law enforcement support in protecting those assets.) Consider augmenting BIA authority with Memorandums of Agreements with local or Tribal law enforcement for joint non-compliance escalation procedures and support.

2. Restructure lease agreements.

Consider restructuring lease agreements for new leases with similar characteristics to those described above in order to include new lease monitoring and administration fees, similar to the FMDs taken on forest product sales. Use the additional fees to develop priority lease tracking and performance measurement capabilities for high value leases.

Long Term Leasing Observations

1. The regions are split regarding when consent is obtained in relation to the lease application process. It is common to obtain consent prior to any application activity, but it is also not unusual for agencies to proceed with lease application development before securing landowner consent.
2. Formal negotiation of residential long-term leases is not normally performed. Most residential lease packages and terms are in standard packages reflecting agency and Tribal requirements.
3. Active BIA involvement in the negotiations of lease terms in certain regions is minimal, often performed when the landowners are absent or unable to negotiate on their own behalf. Commercial leases may be negotiated directly between the interested parties. Normally the negotiated terms of the lease allow regular modifications of lease terms and rental amounts to facilitate fair market value returns for the valuable Trust property.
4. Formal advertisement and bidding for long-term leases is rare, and normally occurs only when lease negotiation has failed or there is difficulty in finding a qualified applicant. In some cases, advertisement is necessary to promote land use. In the Alaska Region, for example, there is regular advertising of improved long-term residential lease property due largely to remoteness and geographic disparities of the parcels available for long term residential leases. Contrarily, the Palm Springs Field Office has no need to advertise commercial leases. The office receives approximately 120 unsolicited bids/proposals for commercial long-term leases on Trust property annually. The realty staff forwards proposals



and leasing guidance documentation to the appropriate landowners. These landowners will usually take offers to their attorneys, who draw up the actual leasing language or draft leases (50% of all area leases).



5.3.5.4 Agricultural Leasing Findings and Recommendations

Finding 1: There is a lack of comprehensive documentation of agricultural land status and use.

The predominant agricultural land use is for crop production. Other significant usage is documented for long-term agricultural leases; e.g., orchard or vineyard, recreational or lakeshore use permits, and miscellaneous permitting (including food vending, gathering, hunting, telecommunications, scientific, archeological, and cultural use).

Large blocks of relatively high-value farmland are historically leased (or allowed specific use through revocable use permits), and are relatively well documented through Contracted Service Provider (CSP), Tribal or BIA land operations and realty program processes. Information sharing between Tribes and BIA operations is inconsistent and highly dependent upon the personal and working relationships established at the local level. Where the Tribe has not compacted or contracted all land operations and realty, the Tribe often manages and documents use of 100% of Tribal lands as well as some of the miscellaneous permitting, and BIA manages and documents leases it approves on allotments and fractionated-interest lands.

Additionally, there are many types of land use with limited or no involvement by either organization. Of particular note is owner use of land, often where a fractionated-owner-interest uses or occupies the tract in which they have an interest. The most frequent trigger initiating any process or documentation is complaint of trespass. Failing such notification, usually neither BIA nor Tribe document such land use. PDA allotments have similar issues, since they are small in size and widely scattered in location, have no Tribal interest, little or no BIA documentation of status or use and limited resources to monitor such land.

The general essence of such fragmented documentation and management of the land is that there is no integrated compilation of land status and land use available for truly comprehensive agricultural land use management. Results of this piecemeal visibility are a lack of any organization's ability to comprehensively view, understand, and plan land utilization, or monitor the effects of such usage.

Finding 1 Quick Hit Recommendation

Initiate formal information-sharing programs between interested parties. Owner use frequently goes undocumented, and information sharing will provide both parties with additional valuable information, and also provides increased participation of individual beneficiaries in their own land.



Finding 1 Longer Term Recommendations

1. **Implement GIS-based land management information systems and process-support capability.**

Provide incentives for funding of comprehensive land use planning initiatives and availability of GIS land management information. (See [Section 5.2.3.3 – Technology and Information Sharing](#).)

2. **Develop and deploy regular monitoring and auditing of land utilization.**

3. **Build a knowledge base of value-added information.**

Include information about best land-use practices, comparative value assessments for like-land, comprehensive land use planning information, and provide access levels based upon the amount of information or process support contributed.

Finding 2: Federal environmental regulation requirements often lengthen the time needed to contract Trust land.

Agricultural leasing is cumbersome in many regions by the application and the local interpretation of various Federal statutes and environmental land management regulations. Reviewing and refining environmental documentation frequently exceeds a year, after the time and cost to prepare original environmental findings.

Key regulations with significant impact are the National Environmental Policy Act (NEPA), Historical Preservation Act (NHPA), Endangered Species Act (ESA) and the Antiquities Act. The intent and largest application of these laws are to regulate and protect *federal public lands*. They are applied to Indian lands because BIA is a federal agency with land management responsibilities. These laws were not passed with primary consideration to Indian lands, and do not oblige private landowners to meet these same requirements.

Two events trigger the majority of environmental compliance and assessment activities. First is attempting to lease or permit Trust land. Second is a change of land use or intent to make improvements with potential impact to the land, such as new fencing, or drilling a well. Typically, the burden is on the applicant or prospective lessee to acquire such clearances. This usually involves hiring a private consulting firm to perform assessments, including on-site reviews, and prepare documentation of proposed undertaking. Even for most minor proposals, the time and cost of this effort offsets or is greater than the value of the lease itself, and in some cases, may devalue the land.

Implementation and adherence to these obligations and requirements varies greatly between regions and locations. Some Tribes, and BIA Agencies are able to apply “categorical exclusion” to planned activities, which can document and complete this process within hours or days. Other situations require full environmental assessment and Environmental Impact Statement, potentially requiring years.



Finding 2 Quick Hit Recommendation

Establish a national “tiger team” of environmental specialists to assist Tribes and BIA offices in addressing environmental compliance with the minimum impact to Trust land use business. Provide best practices, advice for conducting and meeting environmental compliance requirements, and templates of information. Implement an information-sharing program leveraging best practices by Tribes that are experienced in navigating the environmental requirements. Examples are the Hoopa Valley and Salt River Pima-Maricopa Tribes.

Finding 2 Longer Term Recommendations

1. Conduct a thorough review of key federal statutes and regulations that can negatively affect the use of Trust land.

Consider remedies to remove or refine those in conflict with overall Trust and Tribal land management goals.

2. Certify Tribes to provide their own environmental determinations.

Consider allowing Tribes to be certified to provide their own environment determinations with approval by a single review board containing members from the appropriate BIA and other federal government organizations. This will simplify and reduce the number of contact and review points, and significantly shorten the elapsed time for Tribes to obtain authority to proceed on land use initiatives. In conjunction with this change in roles and responsibilities, training and assistance programs should be provided to support development and training of Tribal staff to prepare such documentation.

3. Conduct a review of current DOI environmental manuals.

Expand coverage of actions to be covered by a categorical exclusion, to establish a more consistent basis and more streamlined methods for conducting land use business transactions on Trust land.

Finding 3: The criteria initiating beneficiary consent and the approaches to conduct the consent process vary widely.

According to 25 CFR 162 – Leasing and Permitting, beneficial owners or their legal representatives, and Tribes, “grant” the leases on Trust lands. The leasing process on 100% Tribally owned or single-allotment-interest owner land is relatively straightforward. Difficulties ensue where Trust land has fractionated ownership-interests, or a number of tracts have been aggregated into a single commercially attractive unit of land for lease or permit.

The 25 USC 2218 (ILCA 2000 amendments) determine consent by a majority of ownership-interests approving the proposed land use. Where ownership-interests do not respond to requested consent, or where the interests are minors or not mentally competent, the BIA Line Official is provided authority to provide consent or disapproval on their behalf. The regulation defines the majority consent as follows:

- a) For five or fewer owner-interests, 100% of the interests must consent



- b) For five to ten owner-interests, 80% of the ownership-interest is required
- c) For 11-20 owner-interests, 60% of the ownership-interest is required
- d) For more than 20 owner-interests, a simple majority of ownership-interest is required

Although the above regulations are fairly clear, and are generally followed, problems exist in the inconsistent timing and application of the rules. Additional problems are driven by the volume of workload to achieve this consent. Many BIA Agencies with heavily fractionated land bases for agricultural use may have 20,000 to 150,000 ownership-interests. Communication to the many ownership-interests in pursuing consent to approve a land use transaction becomes onerous, and the workload volume will only increase over time as new generations of heirs will increase the fractionation.

At some agencies, such consent is performed only once, and deemed adequate either in perpetuity or until a majority of the ownership-interests change. Other agencies trigger the consent process only upon probate, sale, or other ownership change. Perhaps the most common approach is to perform consent at the expiration of each existing lease period, or, at the initiation of the land planning and selection of a candidate lessee. Even with this approach, material differences are encountered. Sometimes a notice will be sent informing the ownership base of intent to lease the land tract, with only negative confirmations requested. Other agencies will issue multiple mailings and follow-up phone calls until a positive majority response is received. Still others will perform this process, and, in addition, once the lessee is selected and terms negotiated, perform another consent process seeking ownership-interest approval of the selected operator and specific terms.

The result is an extremely labor-intensive process, which, due to the variations in approach, also may appear disjointed and confusing both to applicant lessees and to beneficiaries involved in the consent process.

Finding 3 Longer Term Recommendations

1. Refine and clarify regulations.

Integrate this solution with the similar solutions found in [Section 5.3.5.2 – Range Management Findings and Recommendations](#) and [Section 5.3.5.3 - Long-Term Leasing Findings and Recommendations](#). For more detail, please refer to the recommendations in [Section 5.2.3.1 – Broad Trust Management and Asset Stewardship Findings and Recommendations](#) regarding ownership-interest information.

2. Conduct an assessment and procedure standardization effort.

This should result in standardized consent forms and a single set of criteria triggering the performance of the consent process. Revise the Inter-Agency Procedures Handbook, and conduct training as appropriate at offices conducting the leasing and realty processes.

Finding 4: Significant difficulties exist in billing and collecting irrigation O&M fees, especially for tracts that are not leased.

Many irrigation projects are federally supported or assisted, and have been designed to collect fees on a regular basis in support of ongoing operation and maintenance. Semi-annual billing



and collection is performed. A federal program manager usually sets the billing rates. Exceptions are made where local and regional water management consortiums, occasionally including Tribes, have been delegated this authority.

The appropriate updates are made to a proprietary system, NIIMS, which then issues invoices. The O&M billing is specifically not tied to the amount of water used or not used, but instead to the costs of the regular, ongoing out-of-pocket operational expenses, maintenance and repair of the water delivery infrastructure, and may also include an allocation of a portion of the initial project capital costs. Where leases are in place, the invoices are issued to the lessee/operator. Where land is idle or under owner-use, the invoices are distributed to ownership-interests. Payment receipts and collection duties are performed by the relevant BIA office, usually the nearest BIA Agency or Field Office.

Non-payment and delinquency rates are substantially higher on O&M billing than on the land leases. Three primary reasons have been identified. First, lease operators may disagree with the amount billed, the status and operability of the irrigation system, or the water allocation provided. Although the invoice amount is derived from the operational expenses, not the amount of water delivered, the operators believe they are paying for the right of water delivery. When less water is delivered than expected, problems with operator payments proportionately increase. Second, as mentioned above, where land has gone idle, billing reverts to ownership-interests. Owners, especially absentee owner-interests, have high delinquency rates, both because they are not utilizing any water or O&M themselves, and also because they are not receiving any rental incomes from leasing of the land. Third, the NIIMS system is aging, and had been developed by a small proprietorship, and is now difficult to maintain or enhance. Particularly difficult are the maintenance or integration of the changes in land ownership-interests and the changes in invoicing algorithms appropriate for changing the land tracts; e.g., unitizing tracts, or disposition to fee status.

Finding 4 Quick Hit Recommendation

Deploy a clear communication message and process depicting the O&M assessments.

Include comparisons and contrasts to the other fees and leasing rentals typically payable on Trust properties. Implement multiple channels of communicating this with both operators and landowner-interests.

Finding 4 Longer Term Recommendations

1. Clarify and refine statutory and regulatory authority and responsibilities.

Include assessments, methods of calculating the O&M fees, and more effective collection and enforcement capabilities in the revisions. Consider eliminating the attempt to collect O&M for non-producing properties (where the land is not leased, permitted, or used by the owner for productive purposes).

2. Implement an integrated billing and collections system capability for O&M.

Integrate the capability with the future integrated system identified for Trust realty billing and collections in [Section 5.2.3.1 – Broad Trust Management and Asset Stewardship](#). If the O&M system is still required for assessing fees on non-Trust lands, then integrate the O&M



system with the new Trust billing system so that all amounts due on Trust lands are managed comprehensively from a single transactional system.

3. **Conduct a study and assessment of the capabilities, functionality, and maintainability of the NIIMS system.**

Make recommendations as to its enhancement or other short- and long-term alternatives. As part of this assessment, evaluate the consistency of the NIIMS functionality, invoicing process and algorithms with the regulations, processes and calculations utilized for the Trust Agricultural Leasing process.

Agricultural Leasing Observations

None.



5.3.5.5 Water Management Findings and Recommendations

Finding 1: National ranking criteria does not enable regions to submit proposals in the order of highest priority.

BIA's Office of Trust Responsibilities manages the grant process for water related activities. There are two programs—the Water Rights Litigation/Negotiation program and the Water Resources Management Planning and Pre-Development program—designed to provide funding to establish and protect Indian water rights as well as to develop Trust water resources. According to the Chief, Division of Natural Resources, these programs are critical in supporting “the long-term BIA goals of assisting Tribes with establishing and defining water rights, settling claims through negotiations, and supporting the prudent development and management of natural resources.” Over the past several years the criteria for funding has been more clearly delineated and communicated, resulting in a more formalized approach to proposal scoring, ranking and funding. In an effort to standardize the evaluation of proposals across all 12 BIA regions, BIA Central Office established official national ranking criteria against which all proposals are assessed.

There is one primary criterion, called the Primary Ranking Factor, which is wholly focused on a proposal's contribution to water rights litigation or negotiation. This criterion provides the most points (five) for a proposal intended to support a U.S. litigation effort. One fewer point each is awarded for proposals supporting negotiation where a federal team has been assigned to the case, planning studies for negotiation or litigation, negotiations where no federal team is in place, and other related projects, respectively. This single criterion carries the most value in scoring. There are four “subordinate” ranking factors in descending value related to completion schedules, performance standards, development objectives, and shared funding opportunities. Both grant programs use the identical national ranking criteria for proposal scoring, despite the fact that one program is designed for litigation or negotiation, and the other is designed for resource planning and development.

Regions and agencies have expressed concern with the proposal ranking system and how minute criteria/points are calculated. The system used today does not always “rank” the region's most important proposals as the highest priority within the region's total proposal package for the fiscal year. BIA regional and agency staff work diligently to assist Tribes in developing their most important proposals, with effort expended to articulate the ranking criteria and the related scoring system as it pertains to Tribal proposals. In collaborating with Tribes, BIA staff often has insight into water management projects that may be of most significance to the Tribe or to the development of regional Trust water resources. However, the national ranking criteria have no scoring category to highlight which projects are deemed of highest priority to Tribal beneficiaries.

Finding 1 Longer Term Recommendation

Address the concern that the national ranking criteria do not always reflect the priorities of regions and Tribes.

There are two primary ways to address this concern. The first approach is to add a special ranking factor into the scoring that represents strictly the regional view of highest urgency or



priority. The second approach is to consider segmenting a portion of grant funds to key water resource regions that can be used at the regional staff's discretion for most urgent projects that were not funded based on national priorities. Tribes with valid opportunities for water asset investigation, planning or development projects could make progress in accordance with established Trust principles. Either of the recommended approaches would improve the chance for funding of certain important development projects that currently cannot compete with the national litigation/negotiation focus for water management funding.

Finding 2: The funding needs identified each year significantly exceed the total funds allocated to the programs. Once tentatively allocated, actual funding distribution occurs well into the fiscal year in which the funds are obligated. Allocations are geared toward litigation support rather than water resource planning and development.

There was unanimous concern across the regions about the level of funding each year for water management projects. Water rights protection and water asset development are critical components of Trust asset management and Tribal economic development in many regions. The BIA Chief, Division of Natural Resource, estimates that the water management needs are three times greater than the funding levels each year. As a compounding factor, the proposal evaluation emphasis on funding litigation-related activities means that funding for non-litigation projects is even more significantly impacted. The grant programs are essentially operated as a single process with pooled funds. All proposals are submitted and ranked against the shared national ranking criteria, effectively making water resource development projects compete for funds against litigation projects.

To compound frustrations, BIA field staff and Tribes expressed concern over how tight submission timeframes are once grant submission (and ranking) direction is communicated through BIA, from Central Office to Regional Office to Agency Office to Tribal Office—and back. Some Tribes felt they had very little time to develop and score proposals due to the timing of receiving guidelines from the Regional or Agency Office. Due to compressed timeframes, agency and regional staff work on numerous Tribal proposals (as well as their own) simultaneously in addition to putting together package summaries.

In times of budget shortages, even the funding levels for proposals tentatively approved during BIA Central Office's National Ranking Meeting must be reduced. Budget cuts result in decreased total dollars allocated and across-the-board percentage cuts for approved projects. Often, the funded projects must be modified (in terms of objectives and deliverables) to account for the decreased funding allocations that occur.

When Tribes are awarded the 34020 funding (Water Resources Management Planning and Pre-Development) and 34420 funding (Water Rights Litigation/Negotiation), non-Compact Tribes apply for PL-93 638 contracts to execute the water management projects. By the time the administrative process of proposal evaluation, ranking and selection of approved projects, and funding of those projects is completed, it is often late in the fiscal year. Tribes are anxious to execute projects as quickly as possible in order to meet fiscal year deadlines *and* forestall BIA decisions to further reduce project funds for projects with obligated but not yet expended funding lines.



There is a specific Trust strategic goal delineated in the final draft of the *Comprehensive Trust Management Plan* regarding Land and Natural Resource Assets. Objectives supporting this goal include:

- a) Develop land natural resource asset plans and stewardship strategies
- b) Preserve and protect the long-term viability of land and natural resource assets consistent with fiduciary duties and with the beneficiary's intended use of the assets
- c) Manage land and natural resource assets effectively and proactively to obtain fair market value for beneficiaries, as required, and to incorporate beneficiary requirements

Consequently, the serious lack of funding—especially for water resources planning and development—are of grave concern to both BIA officials and Tribal staff. Alternative sources of funding and collaboration are being pursued. Tribes that can afford to often contribute Tribal funds to accomplish water management projects. In the Eastern Oklahoma Region the Choctaw, Chickasaw and Delaware Nations either fund completely or contribute funding to water management projects. The U.S. Geological Survey submits proposals on behalf of the Navajo Nation and the Hopi Tribe. The Navajo Gallup Pipeline includes funds appropriated to the Bureau of Reclamation. Regional staff in Eastern Oklahoma believe that Tribes have EPA funding for water management projects. In the Western Region BIA and 10 Tribes are collaborating on research and a proposal to be submitted to the Bureau of Reclamation.

Finding 2 Longer Term Recommendations

1. Allocate separate funds for water resources development projects.

As part of an overall economic and natural resources development strategy for Trust surface assets, allocate separate funds strictly for water resources development projects as they contribute to the overall strategy. Review water resource assets across the Trust to develop target groups, focused in two areas:

- a) Areas where water rights are most at risk of being abused – develop rights communication, negotiation and protection strategies.
- b) Areas where water resources are most valuable to the Trust or may be critical to the financial well-being of beneficiaries – finance water resources development projects proactively as part of an economic development strategy.

2. Develop a comprehensive strategy and communications plan.

To complement BIA funding and activities supporting asset and natural resources planning, develop a comprehensive strategy and communications plan for BIA field representatives and Tribes to obtain alternative agency grants for Indian water resources development projects.

Consider expanding to all regions proactive approaches to competing for BIA funding as well as alternative water management funds. During meetings related to the BIA water management grant process, the Rocky Mountain Regional staff also collaborates with the U.S. Geological Survey to communicate a briefing on U.S. Geological Survey cost-sharing programs. The regional staff's efforts focus on building relationships and providing technical assistance to Tribes on many aspects of water management projects and have created an environment of better collaboration on the overall proposal development process. Pacific Regional Agencies develop Issue Papers to better define and defend the needs articulated in



regional proposals. These practices should be communicated to other regional water staff to facilitate a more aggressive approach to obtaining funding.

Water Management Observations

1. The grants process related to the two water management funding programs has improved dramatically over the past few years according to BIA regional, agency and Tribal staff involved in the proposal development process.
2. The set of documents required for scoring proposals, providing information about the proposals, and summarizing a region's submission package can be cumbersome to complete in a timely manner while BIA staff is assisting Tribes with proposal content and developing their own proposals for submission within grant deadlines.
3. The National Ranking Meeting generally results in a clear understanding of which projects are tentatively approved and at what levels funding will be allocated.
4. Differences in organizational staffing results in different staffing resources fulfilling the necessary roles for water management across regions and agencies. For instance, some regions have designated water resources coordinators and agency water staff, others rely on Superintendents, Awarding Officials, Fisheries Biologists, Trust Resources and Protection Managers, Water Rights Specialists, Natural Resources or Land Operations Officers or Hydrologists.
5. Due to funding and staffing levels there is limited BIA oversight on water management projects once funded. Staff relies on annual progress reports or PL 93-638 contract year-end reports.
6. Related programs include BIA's Irrigation and Safety of Dams Construction programs, the Indian Health Service's Facilities Construction Program, the Public Law 121 program, as well as other federal programs managed by agencies like the Environmental Protection Agency.
7. Water management grants are provided for a single fiscal year, although a significant portion of proposals describe projects that require two years to complete, leaving incomplete projects vulnerable to competition for second fiscal year funds.
8. Trust water assets are shared resources, subject to conflicting goals and decisions at the national, state and local levels that can put Trust assets at risk. Several Tribes have voiced concerns over aspects of Trust water management.



5.3.6 Subsurface Asset Management Findings and Recommendations

Finding 1: As in other land use planning findings, there is not much proactive planning of subsurface resource use on a regional, reservation, reservoir, or individual tract basis. With some exceptions, there does not appear to be integrated marketing and sales effort for subsurface opportunities.

It appears that most subsurface leases result from a lessee approaching BIA, the Tribes or the individual beneficiaries. Once the opportunity is identified, there is a public advertising for the lease sale. There generally are lease sales advertised on a regularly scheduled basis at most agencies. These sales vary from one to four per year depending on the local mineral resources and economy.

For the most part all lease sales are handled in the same manner. Notable exceptions are the Uintah & Ouray Agency in Utah and BIA's Division of Energy and Mineral Resources (DEMUR). They attend industry trade shows, pass out instructions and idle tract lists, accept interest input from companies, advise Indian Mineral Owners of interest, and allow the Indian Mineral Owner to decide if and how to negotiate lease(s) for Allotted Lands. Using this method they have improved their efficiency, effectiveness, and service to beneficiaries.

Finding 1 Longer Term Recommendation

Develop a proactive land use planning process by reservation, formation, reservoir, or other appropriate unit.

Indian Trust mineral assets should be part of an overall land use planning process, done in partnership with Beneficiaries, that identifies areas for specific type of development. In the minerals arena a land use plan would provide a systematic and integrated approach to identifying areas and specific tracts for potential exploration and development as well as current mineral operations similar to the existing BLM Resource Management Plan. A land use plan would help in developing an integrated marketing and sales plan for allotted tracts, provide support for IMDA Agreement development, support development of programmatic NEPA documents, and enhance the likelihood of receiving a bid before a tract is included in a lease sale effort associated with tracts that do not receive bids. Further information can be found in Section 5.2.3.1 – Broad Trust Management and Asset Stewardship.

Beneficiary involvement in a land use planning process could:

- a) Minimize the time required for the consent process, identify and address Tribal versus allottee conflicts in advance of leasing efforts; i.e., mineral development versus cultural preservation or surface use versus mineral development.
- b) Set guidelines for Rights of Way agreements related to mineral development.
- c) Support a regional marketing plan.
- d) Maximize other activities and existing resource; i.e., BIA minerals needs assessment grants.



Existing minerals planning activities and resources that could be leveraged include:

- a) Southern Plains Oil and Gas Report is a guide in decision-making, saving time and effort in the leasing process.
- b) National Indian Energy & Minerals Repository (NIEMR) that is a reference data source for identification of potential mineral deposits and quality of the deposits.
- c) National Indian Seismic Evaluation System (NISES) is a reference data source for identification of potential oil and gas deposits and extent of the reservoir.
- d) Fort Peck archaeological site database containing archaeological information on all sites in the Fort Peck Agency's area.
- e) Diligence evaluation results, especially performed on a field wide basis rather than the current lease wide or adjacent spacing unit basis (It should be noted that field staff believes diligence regulations and lease terms are out of date and have been overtaken by events.).
- f) Results of the two OSM grant program types, Regulation and Technology and Abandon Mine Land. Under the Abandoned Mine Land program three Tribes (Crow, Hopi, & Navajo) are funded annually to reclaim previously mined lands (any kind of mines). The Northern Cheyenne are funded under the Regulation and Technology program.
- g) BLM is planning a third party contract to perform a minerals assessment/market survey for all federal lands in Alaska. The results of this contract could be used in the planning for Alaska Native Allotments.

Having Tribal, BIA Regional, BIA Agency, BLM Field Office, and OSM technical matter experts participate in the planning process will prepare them to handle follow on activities as well as provide valuable local input to the plans. This type of joint planning currently exists in relation to development of NEPA documents.

Another potential source of information for planning purposes is the results of seismic permit activities. Currently there is only a need for surface owner consent and data is not shared with sub-surface mineral owners. There are proprietary and data interpretation issues related to seismic data collection that must be addressed but eventually BIA DEMR and BLM should have access to these results for the benefit of the Indian mineral owner should be maximized.

Finding 2: As detailed in the Title Process and other surface leasing discussions, there are several delays, primarily in identifying the correct title information and beneficiary consent, that slow the subsurface leasing process.

Delays in obtaining accurate beneficiary and title information can slow down the leasing process. In most instances before a subsurface lease can be signed on a particular tract of land, a majority of the beneficiaries must consent to the lease. Obtaining beneficiary consent on a property with a large number of beneficiaries can be a time consuming and difficult task. Frequently BIA requests that a potential lessee obtain the required consent signatures prior to lease approval, rather than BIA obtaining the consent.

To ensure that the correct beneficiaries have been contacted for consent and that they receive payments from a subsurface lease, the local BIA realty officer or specialist must obtain a certified



title status report (TSR) from the appropriate LTRO/TSO. The delays for a TSR to reach the requesting BIA agency can take up to two years. Additionally, different LTRO/TSOs, BIA Agencies and Field Offices use different systems to identify land ownership. Having different systems is costly and increases the likelihood of inconsistent and inaccurate data because there are unsynchronized.

Once oil or gas is discovered, it can become a race for all the property owners to begin drilling operations. If the initial drilling operation is begun on non-trust land that includes the same reservoir with trust land, drilling needs to be established quickly on trust land to ensure that revenue is not lost through failure to act when market activity is at its peak or with possible later drainage. Even though BLM conducts periodic drainage reviews, with the time constraints mentioned above, establishing a lease for unleased Trust lands can take considerable time resulting in lost revenue.

Finding 2 Longer Term Recommendation

Recommendations to improve these areas are covered in [Section 5.2.3.1 - Broad Trust Management and Asset Stewardship](#), [Section 5.3.2 - Title Services, Acquisitions and Disposals](#) and [Section 5.3.5.3 - Long-Term Leasing](#).

Finding 3: Because of the delays and requirements in addition to those for non-Trust lands, private sector lessees believe it is difficult to do business with and consummate contracts on Indian Trust land. Inconsistent organizational models, business approaches and systems among BIA, MMS and BLM, and across geographic areas reinforce this perception. Procedural manuals and forms were reported to be also inconsistent and out of date. Further, communication between DOI bureaus is inconsistent.

The time delays mentioned above, the more complicated federal and Tribal regulations, TERO, additional taxes, frequent political changes associated with Indian Trust land, and the inconsistencies in execution among the federal agencies involved has resulted in private sector belief that it is more difficult, time consuming and costly to do business on Indian Trust land. The BLM's major mission is public land management and Indian Trust land does not, in all cases, have comparable management attention. This is primarily due to a major difference in public versus Indian trust land acreage and overall budget allocation. A consequence is a lack of training in Trust responsibilities and inconsistent level of understanding of Indian Trust responsibilities.

When NEPA documents are developed and by whom has been a point of discussion between local BIA and BLM offices. Performing any NEPA evaluations or reviews prior to award of a lease and development of specific plans for use is thought by some to be of marginal value. However, if development of NEPA documentation is postponed until after lease award the entire NEPA document development and review, if appropriate, must be completed prior to production and is a risk for both the allottee and lessee. Also, the timing of NEPA document development has budgetary impacts on both BIA and BLM since Pre-Lease EPA activities are the responsibility of BIA and Post-Lease activities are the responsibility of BLM.



BIA/BLM/MMS each have their own responsibilities, lease monitoring and enforcement approach, and plan for Trust lands. These are not integrated plans although there is some communication across organizational units.

Memoranda of Understandings: There are several Memorandum of Understanding (MOU) between Bureaus related to Indian Trust mineral asset management. One such MOU is the BIA/BLM/MMS Tripartite MOU of June 1997, Regulating Working Relationships Affecting Mineral Lease Activities. There is a lack of understanding of the content of the existing MOUs, varying interpretations of each MOU, no compilation of MOUs with their applicability, and no source for copies of MOUs.

Systems: As in other processes, there are a variety of locally developed data management systems being used in the field. Locally developed databases and commercial off the shelf (COTS) applications are being used in many ways, a few of which are:

- a) Tracking expired leases
- b) Real Estate Management
- c) Minerals Accounting
- d) Lease Management
- e) Tracking of bonds
- f) Tracking allotments
- g) Modeling tools for evaluation/market value estimates
- h) Databases using MS Access, Dbase, Techbase, and Knowledgeman

A wide range of reasons was provided for the development of local systems. Several of the most frequently cited reasons were user friendliness, tool familiarity, customized reporting, and consolidation of data contained in several other systems.

An example of the use of a different system is the Southwestern Region use of the BLM Legacy Re-host (LR2000) System to obtain land and minerals records. The LR200 System provides access to Case Recordation, Legal Land Description, and Mine Claim Recordation information. LR2000 is a BLM Internet based system. Similarly, the National Indian Oil & Gas Evaluation & Management System (NIOGEMS) is used instead of IRMS in the Rocky Mountain and Navajo Regions, and at six other Field, Tribe and Agency Offices (see Chapter 4 variances). NIOGEMS is a mineral resource tracking system developed as a data integrator for oil and gas management by BIA Division of Energy and Minerals Resources (DEMR) for use by Compact Tribes. NIOGEMS provides greater flexibility and a broader range of data displays than IRMS.

Communications: Notifications of lease actions are inconsistently communicated between DOI bureaus, agencies and other organizational units resulting in coordination failures and gaps in performance of mandated activities. Numerous examples were given during the data gathering work sessions related to notifications, inspections and bond releases. One frequently cited example was the failure to notify BLM of sand and gravel permits.

Manuals and forms: BIA staff expressed the belief that BIA manuals and forms are outdated, inconsistent, and unwieldy to update. Also, there are instances where manuals are not available at field locations and instances where unique local or regional manuals have been developed.



Finding 3 Longer Term Recommendation

Develop an integrated approach to minerals lease management with common systems, data stores and a documented communications plan.

(See Section 5.2.3.1 – Broad Trust Management and Asset Stewardship, Section 5.2.3.2 – Communication and Fiduciary Role and Section 5.2.3.3 – Technology and Information Sharing for further discussion.)

Business Approach: The approach should be clarified and standardized through clear communication of policies and interpretations of regulations on a case basis. Also, Trust elements should be included in BIA, BLM, MMS, and OSM manager's performance appraisals. When there are differences in interpretation of regulations and procedures, a non-confrontational resolution procedure should be established. Also, guidance and clear procedures should be provided for preparation of NEPA documents.

A revised and standardized single lease form and terms could be an effective first move in streamlining the leasing process. Internal and external distribution of the single updated form, instructions and delineation of acceptable terms would accomplish two things. First, it would provide a single standardized and revised form. Second, the distribution would create awareness, both internally and externally, of the Department's commitment to make Indian Trust lands commercially competitive.

Documentation, deployment, training, and use of existing Department assets, i.e., LR2000 (when access is again available), TAAMS and NIOGEMS could have an immediate impact on field staff and their minerals related performance. NIOGEMS already is in broad use and is being ported to a PC base (laptop) with greater security and user capabilities. In addition to its intended oil and gas application NIOGEMS can also be used for Realty Management and Surface Management.

MOUs: A compilation of MOUs applicable to Trust mineral activities should be prepared and published. This compilation should include an indication of applicability or category, a brief summary of contents, and a reference to who the designated custodian is for each. As training programs are refined and developed there should be an inclusion of the MOUs in their content.

Organization Models: The Department should consider the FIMO model in redesigning their approach to Indian Trust management, especially allotted Trust lands management. The FIMO model of an integrated office at a single location under a unified management structure is a proven approach to ensure integration, coordination, and beneficiary service. When this approach is not used, a formal joint planning process should be instituted to develop integrated operation plans. See Section 5.3.3 – Beneficiary Services Findings and Recommendations for further information.

Finding 4: There is a consensus among BIA and BLM staff that current bond amounts are insufficient to cover reclamation activities and do not motivate operators to fully comply with reclamation terms of their mineral leases.



Conflicting with the need for adequate bonding is the economic disadvantage associated with securing and maintaining high dollar value bonds or posting equivalent cash or securities. This economic disadvantage reduces the competitiveness of Indian trust mineral leases. Further complicating this situation is concern by BIA and BLM staff that they have insufficient guidance to establish equitable bonding levels. There has been an IG report prepared regarding bonding and it is under review at this time.

Finding 4 Longer Term Recommendation

Establish clear guidelines for setting appropriate bonding levels for Indian trust mineral leases that address the conflict between reclamation requirements and competitiveness of Indian trust mineral assets.

Field staff should be provided with better guidance and guidelines for setting bond amounts. Additionally, a better matrix for how bonds are established should be developed. Currently the BIA Bond form is an old fashion form; it has a 30-day cancelable clause for solids. Final reclamation requirements are often stated in “soft” or “weak” terms, not measurable, and difficult to enforce. Also, field staff should be given training in estimating adequate bond amounts. OSM has seminars on establishing bond amounts and a training program for reclamation bonding.

From a risk mitigation point-of-view BIA should consider the OSM and Uintah & Ouray Agency bonding policies. OSM holds bonds in excess of \$500 million dollars for four coalmines and insurance policies for off-site damage. U&O uses the discretion of the Supervisor to set bonding for oil and gas and sand and gravel, \$150K minimum reservation-wide bonds are required and that doubles if the Superintendent sees a need to do so. A risk management element should be included in bond preparation and amount determination and the risk should be periodically reassessed. To support both risk management and bond management a tracking system should be established to capture reports related to the integrity of Operators for use in determining future bonding requirements.

Subsurface Asset Management Observations

1. Across the different regions and organizations, BIA/BLM/MMS, generally the same minerals leasing steps are used whether the mineral is fluid or solid. The variations consist of steps being done by different organizations, by people with different skill sets, and/or using different systems and procedures. The underlying process fundamentals appear relatively stable for all mineral commodities despite the array of commodity specific statutes, regulations and organizational units. There is an overall perception that the mineral asset processes for leasing and management inherently differ by commodity, i.e., oil and gas versus sand and gravel. While the physical nature, location and values of commodities dictate differences in operations, terminology and personnel skill and knowledge bases, the fundamental trust processes remain the same.
2. The transition of responsibilities from USGS to BLM for Indian Trust land activities that was initiated in 1982 has been slow to take root in some places. There were a number of data gathering sessions in which individuals expressed surprise upon learning former USGS responsibilities were now BLM responsibilities.



3. There are different approaches to payment between fluid and solid minerals, as there are not solid minerals development on allotted lands. Direct Payment to the beneficiary is allowed for solid minerals while all oil and gas payments are through MMS. While DOI used to allow Direct Payment for both fluid and solid mineral leases, at some point it was determined that Direct Pay was unacceptable for fluid mineral payments.
4. Terms are being written into IMDA Agreements that require Department oversight and involvement that exceed the individual BIA agency's ability to monitor because of insufficient staff.
5. The Tribal Employment Rights Office (TERO) charter and BIA lease terms conflict. Lease terms state that the landowners have first priority for job selection while TERO gives the Tribe the privilege of assigning priorities for job selection. Also, Operator union contracts conflict with TERO.
6. During data gathering work sessions it was reported that because of the Temporary Restraining Order (TRO) of December 5, 2001 there have been only estimated payments of royalty amounts due to Indian mineral owners (beneficiaries) and Explanation of Benefits (EOP) / Financial Distribution Report (FDR) have also been based on estimates. There is concern among the staff that subsequent audits and reconciliation of payments will be an overwhelming task.
7. BIA staff has expressed the belief that BIA manuals and forms are outdated, inconsistent, and unwieldy to update. Also, there are instances where manuals are not available at field locations and instances where unique local or regional manuals have been developed.



5.3.7 Accounting Management Findings and Recommendations

There are many interrelationships among Accounting Management and Probate, Title, Surface Asset Management, Subsurface Asset Management, Beneficiary Services, and supporting information technology. Therefore, findings and recommendations that relate to Accounting Management are mentioned in the Cross-Process Findings section of this chapter and in other process areas. The findings and recommendations described below are considered to be key from the Accounting perspective.

Finding 1: There are currently multiple financial and associated realty systems and manual methods being used in the field that must be separately maintained and updated which may create implications for accounting management.

Note: refer to *Trust Reform, Final Report and Roadmap*, dated January 24, 2002, for more information on Trust information systems.

As described in [Section 5.2.3.3 - Technology and Information Sharing](#), there are currently multiple financial and associated realty systems and manual methods being used in the field that must be separately maintained and updated. The result is creation of overlaps, gaps, and conflicts of information.

This duplicate and conflicting information in multiple systems makes it difficult for BIA and OST/OTFM staff to identify the correct beneficiary records for account maintenance, research, distributions, and disbursements. For example, to distribute from an estate, field staff must determine whether beneficiaries listed on the probate order already have accounts. If not, new accounts must be opened. If beneficiaries already have accounts, field staff must ensure they identify the correct accounts. Otherwise, distributions and disbursements may be made to the wrong people. Ascertaining the correct account information often takes a considerable amount of time for research, documentation gathering, and reconciliation. As a result, disbursements to heirs are frequently delayed.

Another Probate-related issue with current Trust information systems is the difficulty associated with determining the source of funds in IIM accounts, especially for older probate cases. IIM account balances that accrue after the date of death must be distributed according to the probate order. Because there are no automated mechanisms to determine the source of funds, Probate staff must rely on paper realty records to identify the source of funds in IIM accounts, increasing the time and error rate of associated distributions to heirs and devisees. The longer the probate takes, the more difficult and time consuming it is to determine the source of funds.

The Trust is currently hampered in fulfilling its fiduciary responsibilities to beneficiaries by the lack of a standard accounts receivable system. A few BIA offices use local accounts receivable systems, but most offices have no automated capability to track effective dates and termination dates of leases or permits, send invoices for payments due, project the amount of money coming in, or monitor payment compliance.



At the level of overall Trust investments, the lack of an accounts receivable system prevents an accurate estimate of the amount of money available for the daily investment with Treasury, as well as an accurate sense of cash flow for better investment decisions.

Moreover, the Trust has no automated capability to generate the regular reports and reconciliations required by the Department of Treasury and OST/OTFM management. Preparing them is a labor-intensive process, for example, the SF-224 report, a regulatory monthly cash transaction report required by Treasury, takes the entire month to prepare.

Finally, there is no association of Trust real estate assets with IIM accounts, although this enhancement is planned. IIM statements currently do not include a list of real estate holdings and investment holdings and transaction activity associated with the account, so beneficiaries can validate their holdings with income to their accounts on a regular basis.

The Data Quality and Integrity project, an initiative underway to improve the quality of Trust data, will address some of the problems regarding errors and inconsistencies within IIM accounts. This effort will establish a centralized data warehouse to store valid data with the ability to link with multiple systems, and sustain a single, approved set of critical data elements. This will directly address the problem of different Trust units not using the same data ownership, realty and payment data. However, it will not address the root causes of errors and inconsistencies, which have been outlined above.

Finding 1 Quick Hit Recommendation

Establish an IIM account tracking process. Until title and accounting systems can be effectively integrated, BIA Agencies and OST/OTFM should monitor decedent account activity to ensure that income can be linked to the appropriate Trust assets. This will ensure that income generated after the death of a beneficiary can be appropriately distributed to heirs and devisees in a timely manner.

Finding 1 Longer Term Recommendations

1. Build a data warehouse.

As recommended in Section 5.2.3.3 - Technology and Information Sharing earlier in this chapter, build a data warehouse that will house all critical components of information and allow appropriate units to access information for informational, reporting, or processing purposes. Once the warehouse is available, put the information currently maintained manually and stored in a paper-based system into the new automated system.

2. Enhance TFAS capability.

TFAS is critical to the management of Trust accounts. Therefore, enhancements to the system, such as the following, will improve the efficiency and effectiveness of the accounting function:

- a) Increase the use of the “memo tickler” capability in TFAS. Record important information associated with accounts, especially anything of which BIA, OST/OTFM, and Compacted and Contracted Tribal Offices may need to be aware if



a beneficiary makes an account maintenance or disbursement request in another region. This will accelerate the completion of requests and reduce errors.

- b) Follow through with enhancements to TFAS that are planned or already underway, such as associating assets with IIM accounts.
- c) Add reporting capabilities to TFAS to automate Treasury and in-house management reports and reconciliations as much as possible.

Finding 2: Accounting transactions are overly complicated and labor-intensive.

As described in Chapter 4, most account maintenance and financial transactions are initiated by field offices, but completed by the OST/OTFM Central Office.

Complicated forms and the amount of required documentation cause account maintenance and disbursement requests to be confusing to beneficiaries and labor-intensive for BIA and OST/OTFM staff. Field staff reports difficulty in helping beneficiaries fill out these forms and in understanding supporting documentation requirements.

Account maintenance and disbursement request forms must currently either be notarized or witnessed by a DOI employee. In remote areas where it is inconvenient to go to a BIA or OST/OTFM office, it is usually difficult to locate a notary public. This is a particularly trying issue in Alaska, where many villages don't have a notary. It sometimes costs more than the account balance for a DOI employee to travel to a remote area to witness signatures. Another concern voiced frequently by work session participants was that notaries charge up to \$8 per page.

Hard copy work tickets, forms, and back-up documentation must be faxed to the OST/OTFM Central Office for review, approval, and encoding of transactions to TFAS. There may be several pages of documentation required to support one request. This process results in massive amounts of paper to be batched and logged by the Central Office Accounting Processing Control Desk, then logged in and out of Pre-Quality Assurance (QA), Encoding, Post-QA, and possibly the Issues team, before being sent to the OST Office of Trust Records (OTR) for archiving.

The document and records management issues mentioned earlier in this chapter add layers of complexity to transaction processing. OST/OTFM field staff is required by regulations to keep only the current and previous year's files. Anything older than two years must be sent to the OST/OTR with all the contents for archiving. Retrieving records from OST/OTR is a lengthy process. Therefore, beneficiaries may be requested to provide duplicates of documentation when their account status changes, or to complete account maintenance or disbursement requests. Some of the requisite documentation may be difficult to obtain in the first place, so requesting duplicates often angers beneficiaries and delays completion of transactions. To make matters worse, field staff reports that they are frequently asked by OST/OTFM Central Office to submit the same documentation several times, or to submit additional documentation.

The result is that in addition to the frustration caused for beneficiaries and field staff, it is difficult for anyone to predict how long account maintenance, funds transfers, or disbursement requests will take to complete. Field staff reports elapsed time of anywhere from one day to several



months, and cite numerous examples of hardships imposed on beneficiaries whose disbursement requests took too long.

This method of transaction processing stands in sharp contrast to the commercial trust document imaging and automated workflow best practices described in Chapter 3.

Finding 2 Longer Term Recommendations

1. Implement document imaging.

As recommended in [Section 5.2.3.4 – Technology Tools](#), implement document imaging and retrieval capabilities so beneficiary documents and records can be scanned once and made available to appropriate DOI staff nationwide. This will eliminate the need for beneficiaries to provide documentation multiple times. Identify alternatives, such as document imaging, to notarization by a DOI witness in order to certify accounting transaction forms.

2. Simplify input forms.

- a) Streamline account maintenance and disbursement request forms so they are easier to understand and complete.
- b) Make forms, requirements, instructions and procedures available online to DOI staff
- c) Make forms and instructions available to beneficiaries electronically
- d) Develop beneficiary instruction cards or brochures that explain procedures and requirements, and have them available in BIA and OST/OTFM offices.

3. Implement workflow or case management technology and improve workflow tools.

As recommended in [Section 5.2.3.4 – Technology Tools](#), implement workflow or case management technology to manage the information and processing flow and ensure that essential steps and controls are taken, as well as minimize process loops and rework. (For a description of a commercial trust account management system, refer to [Section 3.2.6 – Accounting Management Findings and Recommendations](#).)

4. Decentralize account maintenance.

Develop enhancements to information systems and appropriate dual controls, so account administration authority resides with designated field officials.

5. Establish an accounting technician position at each BIA Agency or Field Office to handle account maintenance requests.

Issues can be resolved more efficiently at the local level because BIA Agency and Field Office personnel are familiar with beneficiaries within the communities they serve.

6. Review documentation requirements

After the above steps have been implemented, the documentation which is required for opening and maintaining accounts should be reviewed. The purpose of the review would be to determine if documentation had previously been supplied or required documents could be imaged.



Finding 3: There are numerous issues within the Collection process that interfere with timely deposit and posting of funds to appropriate beneficiary accounts.

Distribution advice for leases and permits has large error rates. As noted in other areas, parcels of land may have hundreds or more than a thousand fractionated interest owners. When a parcel of land is leased, the appropriate BIA program office sets up a file that lists all interest owners with corresponding IIM account numbers and interest percentages for payment distribution. In most cases this information is encoded in the Lease Distribution module of IRMS (or the MAD system in Great Plains). These systems create electronic batch updates to TFAS. However, due to the multiple systems of record, all ownership records may not be correct or consistent with one another. One incorrect ownership record can suspend an entire batch transaction because payments cannot post to TFAS until every transaction is correct. This problem is compounded throughout the term of a lease due to conveyances of ownership or financial interest. In regions where a lease distribution interface file is not used, BIA program staff must manually prepare distribution information for the Authorized Collection Officer, who submits checks and distribution advice to OST/OTFM for the preparation of work tickets for each transaction. In these cases, OST/OTFM Accounting Processing will reject incorrect transactions, but the amount of work necessary to correct a rejected transaction may be two or three times that of the original.

BIA offices used to routinely deposit funds that couldn't be distributed due to records discrepancies into special deposit accounts (SDAs) so the money could earn interest until discrepancies were resolved. This practice resulted in many SDAs with large balances, because field staff did not find the time or information to resolve them. An initiative is underway to "clean up" these accounts, and the current policy is to use them only as a last resort. However, a few regions continue to use SDAs because the majority of lease payments are due at the same time each year, and they do not have the resources to process large volumes of payments to be distributed to multiple interest owners in a timely manner.

Compliance with the policy of depositing funds within 24 hours of receipt is inconsistent nationwide. When lease payments are received and preparation of distribution advice is problematic due to discrepancies or sheer volume of work, BIA offices may simply hold checks until distribution advice is correct. Agencies located in remote areas often have no choice but to send deposits to the OST/OTFM Regional Office via regular mail or literally drive several hours to hand carry them. In addition, sometimes an OST/OTFM office receives too many deposits on one day to process all before the bank cut-off time.

Field staff also expressed concerns about lack of adequate internal controls and back-ups for the collection process at BIA offices. Although BIA as a whole is audited independently, there is no independent audit of the collection process at BIA Agency and Regional Offices.

Finding 3 Quick Hit Recommendation

Implement interim methods of monitoring lease and permit payment compliance and Direct Pay compliance.



Finding 3 Longer Term Recommendations

1. Automate and centralize the collection, deposit, and posting process.

This recommendation is dependent on the Recommendations for Findings 1 and 2: accurate ownership records, the association of assets with IIM accounts, document imaging, and an automated Accounts Receivable system. The accounts receivable system should have capabilities to track effective dates and termination dates of leases and permits, link to asset and ownership information, send invoices for payments due, accept interface updates of payments received, auto-distribute to beneficiary accounts, project cash flow, and monitor payment compliance. Invoices would contain remittance stubs with bar coded payor and asset codes tied to ownership information and payment amount. Lockbox services would be contracted with a central bank to open mail, scan bar coded payment information into an interface file, and deposit checks. The payment interface file would then be uploaded to TFAS, and funds automatically distributed to appropriate accounts. (See [Section 5.2.3.1 – Broad Trust Management and Asset Stewardship](#) for further detail.)

Consistent internal controls should be implemented for the collection process at BIA offices. However, a centralized collection, deposit, and posting process would have numerous benefits: it would provide much better controls for depositing and posting funds to beneficiary accounts in a timely manner. Auditing a centralized process would be much more practical than auditing processes at offices nationwide. A centralized collection process would also eliminate many process steps performed at Agency and Regional Offices, thereby relieving BIA program staff of the burden of preparing lease and permit distribution advice, and relieving OST/OTFM field staff of preparing deposits and creating paper or electronic work tickets for distribution advice. This would allow field staff more flexibility to provide beneficiary service and focus on functions that must be performed in the field.

2. Consider eliminating or minimizing Direct Pay.

When systems and data are better integrated, the timeliness and predictability of distributions and disbursements should improve to the point that Direct Pay is no longer needed. If Direct Pay arrangements continue to be allowed in the long term, compliance monitoring and enforcement could be included in the automated accounts receivable system. For example, payors could be required to remit payments via electronic funds transfer (EFT). When the EFT is initiated, an electronic notification of payment could also be sent to the bank that provides lock box services. These payment notifications could be uploaded to the accounts receivable system and trigger follow-up activities for non-payment. (See [Section 5.2.3.1 – Broad Trust Management and Asset Stewardship](#) for further detail.)

Finding 4: Poor communication between OST/OTFM and BIA contributes to problems in providing services.

Field staff reports a lack of communication between OST/OTFM and BIA personnel that contributes to problems in providing Trust services. The problem exists between BIA and OST/OTFM in the field, and between the field and the OST/OTFM Central Office. Part of the



problem has been a lack of written guidance and procedures for accounting transactions, which is now being addressed by the BIA/OST Inter-Agency Procedures Handbook.

New directives and requirements are not always clearly communicated from OST/OTFM Central Office to the field, and this problem is compounded in areas where there is poor cooperation between BIA and OST/OTFM. BIA and OST/OTFM field staff complains that Pre-QA reviewers in OST/OTFM Central Office reject many accounting transaction requests because different people interpret regulations differently. Rejected requests are a particular sore point in the field because accounting transaction processing is already labor-intensive, and the amount of work to resolve a rejected request, as previously noted, may be three times that of the original. Beneficiary service suffers as a result of this.

Finding 4 Quick Hit Recommendation

Continue with the Inter-Agency Procedures Handbook training initiative already underway.

Finding 4 Longer Term Recommendations

1. Develop electronic reference/help.

Providing electronic reference/help to BIA and OST/OTFM staff can be developed and implemented relatively quickly, and can be expanded and upgraded on a continuing basis.

2. Create a “single point of contact” position to oversee daily operations.

Such a position will facilitate communications and issue resolution between BIA and OST/OTFM. This should also result in improved services to beneficiaries.

3. Conduct periodic meetings between BIA and OST/OTFM at all levels.

Resolve issues and unclear responsibilities, and identify additional opportunities to improve communications between BIA and OST/OTFM

Accounting Management Observations

1. DOI employees are hard working and dedicated to providing the best service they can under the current environment.
2. The diversity of the Indian population and differing cultural patterns contributes to problems with obtaining required documentation for account setup, maintenance, and financial transactions. Indians born in the 1930's and prior may not have birth certificates. Indians often take on different names without legally changing them, and in some tribes, members have three names that are all legitimate. Indians also may have “traditional” marriages where there is no legal documentation, and they may not value the importance of other legal documents such as birth certificates and Social Security cards.



5.3.8 Cadastral Survey Services Findings and Recommendations

The findings and recommendations of the As-Is Model project correspond with three of the recommendations made in the *Trust Reform, Final Report and Roadmap* dated January 22, 2002, Develop a Schedule to Address Cadastral Survey Backlog, Develop a Process for Requesting Cadastral Surveys, and Improve the Cadastral Survey Budgeting Process. The recommendation from the Roadmap to create a Survey Working Group was implemented by DOI earlier in 2002. Findings 4 and 5 of this report support the remaining Roadmap recommendation – Assess the Feasibility of Expanding the “Yakama” Project.

Finding 1: There are no known policies and procedures available to advise Tribes and BIA in which situations surveys are needed and whether or not a non-BLM or official Cadastral Survey is required. This, combined with the perception that BLM lacks adequate resources to provide survey services, leads some BIA Field Offices to not request a service on behalf of beneficiaries from BLM, or to request the wrong type of survey service; to put the survey need on hold and advise the requestor it cannot be fulfilled; or to contract with private surveyors or use in-house staff who may not be qualified or properly guided to correctly perform the work.

Surveys play a vital role in Trust management as they are necessary to determine legal ownership of land assets. Cadastral Surveys, as performed by BLM, accurately identify land boundaries and distinguish property rights between adjacent Trust, public, and fee landowners. BLM performed Cadastral Surveys are considered the standard and carry the full authority and weight of the United States government and can best protect Trust assets. The failure to request the appropriate type of survey services, combined with the failure to request them when they are needed, can impact a wide variety of Trust needs and situations, noted below.

The tendency of beneficiaries and BIA Agencies to not request BLM survey services has been fueled by a historic lack of funding and has led to a perception by Tribes and individuals that their needs are not going to be addressed. The result is their not asking for the survey service, or finding alternative methods of receiving the service. These alternative methods at times include having surveys performed by unqualified and unauthorized personnel, as well as contracting with private survey companies that may not be in compliance with 25 USC 176. The net effect of this is duplication of effort as surveys have to be redone by BLM to be legal, jeopardizing individual and Tribal assets by erroneous boundary locations and acreages that could result in lawsuits, and affecting rights and values associated with the asset.

Many boundary and title related problems are caused by errors made by private contractors or BIA in-house staff completing surveys that may cause payment errors of Indian Trust monies. The legal description used for transactions such as leases or fee-to-trust or trust-to-fee may reflect significantly erroneous acreage due to ancient government surveys, current private surveys, or BIA/Tribal surveys. The Quinault Tribe, who is now having BLM resurvey allotments once surveyed by private contractors that resulted in incorrect boundaries and inaccurate timber revenue produced from an allotment, highlights the problem.



In the future, BLM will not have the ability to address all the survey needs identified in Indian country due to retirement and recruitment issues. Therefore, even more outsourcing to either Tribes or the private sector will be warranted. The law states that surveys on Indian lands are to be under the direction and control of BLM, which could allow private contractors to provide certain survey services not considered inherently federal, through oversight by BLM. With the exception of Alaska, there is currently no oversight or monitoring of the work provided by non-BLM sources.

Finding 1 Longer Term Recommendations

1. **Develop the policies and procedures necessary to assist Tribes and BIA determine when surveys are needed, what type is warranted, and who should perform the survey.**

Accompany this with appropriate communication programs to convey better understanding of the guidelines to Indian country.

2. **Decide how and when to contract with private surveyors.**

Develop a method to identify and approve private surveyors to provide non-BLM surveys and assist with BLM surveys, similar to the BLM Mineral Surveyor Program. BLM would provide oversight and record keeping, ensuring the surveys meet their standards and are accurate.

3. **Modify the Project Office concept.**

Send survey teams to areas with high priority Cadastral Survey needs for a four-to-five year timeframe to complete the surveys and then move the teams to other locations. This would provide an accelerated method of completing the highest priority needs of a region and ensure Trust assets are properly identified and recorded. Assess future BLM recruitment needs for these teams.

Finding 2: A very significant backlog of unmet survey needs exists throughout Indian country in the lower 48 states.

Preliminary inventories by BLM indicated a five to six year need estimated to cost \$60 million with another \$50 million need projected over an additional 10 years. BIA funded about 100 BLM executed Cadastral Survey projects of Trust lands in fiscal 2001 at an approximate cost of \$4.6 million. In fiscal year 2002, BIA funded 130 projects at an approximate cost of \$5.5 million. These projects range in size from less than one mile of survey in size to several hundred miles and are primarily the highest priority needs identified by BIA. (See Appendix L for detail) The funding identified in Finding 3 is for these high priority needs, only. BIA offices and Tribes do not keep specific metrics of all the survey needs within their areas but all offices interviewed confirmed that a significant backlog exists. The backlog for unofficial administrative surveys also exceeds the resources available.



Finding 2 Longer Term Recommendation

Complete the inventory of survey needs.

To determine the true extent of the backlog, the current initiative by BLM and BIA to inventory the survey needs should be completed. The data should be entered into the automated request system and data store now under development by BLM Headquarters and BIA Central Office. The system will allow prioritization of critical needs and a more equitable distribution of funds to meet Trust management responsibilities. This system and inventory should be completed as quickly as possible.

Finding 3: The funding process between BIA and BLM for survey services appears to be slow, and not equitable or appropriately reflecting priorities. This has caused delays in trust-to-fee transactions (disposals), timber sales, mineral permitting, resolution of trespass cases, identification of housing sites and awarding of mortgages, and business development plans of Tribes. Delays in some areas were reported to be several years.

For the past two years, new funding for high priority needs has been provided; however, issues with the process of distribution remain. These issues include priority setting criteria, perception of the amount of survey needs in the field, and the existence of BLM/BIA/Tribal Project Offices.

Funding for Cadastral Survey services is appropriated by Congress to BIA, which in turn works with BLM Headquarters personnel to allocate funds to the regions. The funding is given to the BLM State Offices to support the regions within their area. Currently, the funding is not distributed to the BLM State Offices based on any known priority setting criteria. This results in some BLM State Offices receiving a smaller amount of funding than is necessary for high priority needs in BIA regions they support. Another consideration in the funding distribution is the existence of BLM/BIA/Tribal Project Offices within the region since they receive funding, first. Once they have received their funding, Project offices may be completing low priority surveys at the expense of high priority needs of the region.

In some regions, there is an inconsistency in the type of surveys being subsidized by BIA among Tribes. For example, HUD housing surveys or surveys of individual allotments may be funded in some regions and not in others. Some Tribes must pay for having a survey accomplished, others are funded by BIA. This is dependent on the policy of each regional BIA office.

In a recent cost analysis study by BLM, two fiscal years were studied to determine a national average cost per survey mile for illustrative purposes. The national average cost has remained nearly the same over the two years.

- a) 2001 National average cost \$2,274/mile
- b) 2002 National average cost \$2,051/mile.

The states studied attributed the lower cost in 2002 to a reduced BLM surcharge on funds provided by BIA and to the increased use of technology that resulted in greater efficiencies.



There is, however, one predominant factor that is causing costs to increase. Cadastral Surveys are becoming increasingly complex and staff is spending more time conducting office research. As the populations of the Indian reservations continue to increase, fee and Trust lands within reservations are being developed for residential, agricultural, and commercial purposes. With complexities of ownership patterns, the increased usage, and increasing land values, a corresponding increase is being created in the need for boundary protection and maintenance to protect Trust and private property rights.

Finding 3 Longer Term Recommendation

Redesign the survey funding process and consider providing BLM a budget for Indian Trust Cadastral Survey program management.

A priority setting process needs to be developed that takes into equal consideration the needs of the Tribes as well as the individuals. Lack of surveys is resulting in loss of income from revenue producing activities such as timber sales, oil and gas leases, and mineral leases. In the future, consider using the revenue from these activities to provide funding for the required surveys.

Also consider changing the current survey services funding process to provide BIA commitment of funding at the beginning of the fiscal year to BLM. Currently, there is no commitment for funding until the money is made available late in the second or third quarter of the fiscal year. This leaves BLM without the ability to pursue the identified priorities until the funding is made available.

Finding 4: The ability to identify and validate needs as well as provide a research source for survey projects and litigation is hampered by the lack of an automated system that provides access to ownership and survey records.

There isn't one comprehensive DOI system where all offices can input and individuals can retrieve information related to parcel ownership, encumbrances, adjoiner information, and surveys. Tribes and other DOI Bureaus are performing their own surveys without Secretarial authority and without providing records to a central records system.

There is no standard agreement in place between BLM, BIA and Tribes to distribute survey records when completed. Presently, survey records may or may not be distributed to regional offices, agencies, LTRO's, Tribes, and requestors resulting in a splintered record system.

Those Tribes that contract with private surveyors resist providing private survey information to the government as they feel it is proprietary. Therefore, private survey information is usually not recorded on TSR's or in any other record keeping system, this may impact individual or Tribal Trust assets.

Finding 4 Longer Term Recommendation

Centralize all survey and land record keeping activities into one entity within DOI.

There is a need for one unified automated land information and record processing system that is compatible with other record systems and easily accessible by everyone needing the information.



The system could include survey and land ownership information and be integrated with other federal automated record systems, such as title systems. Encourage Tribes to provide private survey records in the system so their land information is included. See Section 5.2.3.3 – Technology and Information Sharing for further detail.

In order to lay the foundation for one unified automated land information and record processing system, BLM should consider establishing standards for digital and scanned survey records and their distribution. Today, each BLM State Office determines how electronic survey records will be created and stored as well as their distribution to BIA, Tribes, requestors, and the public. Standards are already in place for paper copies of survey records.

Finding 5: As a requirement for land title, land transaction, and management decision-making processes, the Public Land Survey System (PLSS) on Indian lands needs to be maintained at a comparable level as provided for federal and private lands. However, this maintenance rarely occurs for Trust assets.

Many requests from individuals and Tribes for Cadastral Survey services are the result of the lack of on-going maintenance of the PLSS. This lack of maintenance is leading to an accelerating loss of original boundary evidence, much of which is over 100 years old. The cost to restore lost boundary evidence is significantly more than if the original boundary can be recovered and perpetuated. Some original boundary evidence is little more than sticks and stones and should be replaced with more permanent monuments. The loss of original evidence may lead to litigation that averages \$350,000 per lawsuit (see Chapter 3, Industry Standards).

The loss of boundaries of individual allotments and reservation boundaries may cause unauthorized uses and theft of Trust resources i.e. timber, minerals, oil and gas; and raises questions of jurisdiction related to law enforcement. There is no money provided for the day-to-day survey and boundary maintenance needs of the Indian people and Tribes, only the high priority project funding mentioned earlier. However, a few BLM/BIA/Tribal Project Offices may have accomplished their initial priorities and are now in a maintenance mode. Maintenance includes locating and restoring deteriorated monuments, expanding the Geographic Coordinate Database (GCDB), and developing accurate automated boundary records into a comprehensive land record system (see Finding 4).

Finding 5 Quick Hit Recommendation

To further the capability of maintaining the PLSS in Indian Country, deliver the BLM developed training course “Land Tenure in Indian Country” to all BIA regions within the next year. In some instances, a lack of understanding of the criticality of boundary evidence is leading to its deterioration. This course is a collaboration between professionals, from different federal agencies, involved with realty (title), cadastral survey (boundary), and appraisal (value) principles for federal real property management programs and should include Tribal participation.



Finding 5 Longer Term Recommendation

Determine how to fund long-term maintenance of the PLSS.

BIA and BLM need to work together to determine how best to fund long-term maintenance of the PLSS in Indian Country. This would be in addition to the high priority surveys that are currently being funded.

Cadastral Survey Services Observations

1. Almost all offices have their own form of a tracking tool - some automated, some manual. There isn't a consistent or comprehensive method of survey tracking.
2. Surveys are not filed in a "survey file" at Agencies/Tribal offices. They are filed in project or allotment folders which makes it harder to find results when needed, later.
3. The TSR often has inaccurate land description information. There is a backlog of title updates from current survey records. The survey is not recorded on the TSR, just noted, assigned a number and filed.
4. Legal descriptions for transactions such as Probate Orders, homesite leases, and Rights of Way are being written by staff not adequately trained in writing legal descriptions and at times can be inaccurate; this may cloud title and affect individual assets. Currently, there may be several different written descriptions for the same parcel, but only one can be accurate. Inaccurate legal descriptions may cause inaccurate payments to IIM account holders.
5. The same standards and survey requirements that apply to the private sector for title are not applied in Indian Country; i.e., lender requirements, subdivision of lands, Rights of Way and easements.