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**ITMA REPORT
ON
ITMA-BIA LAND CONSOLIDATION/ESTATE PLANNING
ROCKY MOUNTAIN PILOT PROJECT
OCTOBER, 2009**

On October 22, 2009 ITMA Director Mary Zuni-Chalan and Legal Consultant Majel Russell along with her law office partner, Sam Painter, met with Bureau of Indian Affairs (BIA) Director of Trust Services, Vicki Forrest and her staff, Tamela Ross and Kelsey Young regarding the joint BIA/ITMA Estate Planning Pilot Project. The project is now specifically focused on consolidation agreements at probate

First, the FY2009 Rocky Mountain Pilot Project will be considered completed with the preparation and presentation of a comprehensive report and a presentation at the ITMA Annual Conference, November 11-13, 2009. The report will detail the number of referrals, process utilized to negotiate among heirs, finalized consolidation agreements and contrast the outcome of the case with a consolidation agreement verses application of AIPRA provisions. We can clearly demonstrate that the majority of land interests involved in the project were not fractionated but kept completely intact.

With the Pilot Project concluding, ITMA understands that the contract will be extended through April, 2010. The contract scope of work will include continuing with referrals for consolidation agreements in the Rocky Mountain Region and moving into referrals from probate cases in the Great Plains.

ITMA Legal Consultants presented numerous issues encountered with the consolidation agreement process and BIA was able to immediately address most issues by contacting appropriate staff:

1. Inspection of allotments. The estate land inventory does not provide any information regarding improvements such as homes, barns, corrals, other outbuildings or irrigation systems that would increase the value of the property. Further, inventory information does not include water resources. We discussed utilizing a contracted inspector that would only confirm the existence of certain improvements to allow families to negotiate from a position of knowledge. The inspection would not be an appraisal of the improvement. Ms. Forrest agreed

that project funds could be utilized to retain an inspector in those cases where an inspection would facilitate a successful consolidation agreement.

2. Current land inventories. Some estate inventories do not include lands from a prior probate. Problem was attributed to a failure to enter earlier probates into the TAAMS system. Ms. Forrest contacted Roger Grace from her staff who stated that the current policy was to enter from the oldest to the latest probate orders to insure current inventories. Ms. Forrest will contact LRTO's to insure they are proceeding in accordance with the policy.
3. Partial distributions. Ms. Forrest agreed with allowing for partial distributions to allow families to obtain IIM funds at the outset of negotiations rather to await a final probate order. No prohibition exists regarding a partial distribution but Judge Jones has concerns and has denied the most recent motion for partial distribution. We agreed to discuss this issue with Judge Jones at the upcoming meeting in Las Vegas.
4. Partitions. Some families desire to partition lands in the probate inventory as a component of the consolidation agreements. RM OHA has attempted to order the BIA to complete partition prep work for a probate but when work not completed within time frame, then partition is not included in final probate order. Problem seems to be that BIA is unable to complete required survey within necessary timeframe for probate. Ms. Forrest stated that project funds may be utilized for a contract surveyor in the event a partition of an interest is crucial to finalize a consolidation agreement.
5. Valuation of mineral estates. The current land inventories from the BIA have estimated values for the surface estates but often no value or a nominal value for the mineral estate. At Fort Berthold, or other Reservations with likely development, we are concerned that heirs have info on estimated values of mineral interests to enter into knowledgeable negotiations. Ms. Forrest contacted Mike Black, Great Plains Regional Director, who stated that they obtain fair market values of mineral estates from the Bureau of Land Management to determine appropriate mineral lease rates. He will assist us with obtaining fair market values for mineral interests for estates referred to us for consolidation agreements.
6. Consolidation of Property outside of estate. Ms. Forrest agreed with including interests owned by heirs outside of the estate in consolidation agreements. A couple of families want to exchange interests they currently own for interests within the probate estate.

7. Will Drafting. Ms. Forrest agreed that we could prepare wills for individuals that desire as a component of the consolidation agreement. However, she instructed that wills should be prepared for trust assets only.
8. Storage of wills. Ms. Forrest is exploring storage of wills at NARA – in Lenexa, KS. Additionally, she will determine feasibility of including will information in the TAAMS system. Until further information, we are to hold prepared wills in our office.
9. Consent of minors and incompetent persons. Ms. Forrest states the BIA superintendents should sign on behalf of minors and incompetents.

In addition, the group discussed lowering the threshold for referral of cases to the project. Jim Yellowtail had set a threshold for any probate estate that had an interest that is 25% or greater of a total tract for referral. Vicki would like to lower the threshold to probate estates with any interests in the estate over 5%.

Finally, BIA asked that ITMA consider exploring consolidation agreements for Agua Caliente at Palm Springs as a means to assist landowners and to reduce the considerable burden of management of the various interests. A quick turn-around time on this effort was requested. ITMA agreed to coordinate with Tamela Ross to discuss traveling to Palm Springs with BIA staff in November and to consider options for the Agua Caliente.

ITMA will provide a two-hour detailed report on the very successful Rocky Mountain Pilot Project at the ITMA Annual Conference.