The fractionated ownership of Indian allotments created by the General Allotment Act of 1887 (GAA) has been estimated to cost the Department of the Interior approximately $432 million annually to manage. These costs will continue to increase each year if decisive action is not taken to appropriate the funds authorized in the American Indian Probate Reform Act (AIPRA).

Over time, the system of allotments established by the GAA and subsequent intestate inheritance by multiple generations of descendents has resulted in the fractionated ownership of Indian lands. As original allottees died, their heirs received an equal, undivided interest in the allottees’ lands, and so it went for generations. As of 2005, there were four million owner interests in the 140,000 tracts of individually owned trust lands, a situation the magnitude of which makes management of trust assets extremely difficult and costly. These four million interests will expand to eleven million interests by 2030 unless major changes are made to address the problem.

The Department of the Interior is responsible for maintaining title records of all trust land interests and managing income derived from the leases of trust land interests. Income must be allocated among all of the owners of undivided interests in each allotment. In some instances, the common denominator required to make this calculation extends 26 digits. Income is maintained in federal Individual Indian Money (IIM) accounts for the individual owners, regardless of the size of their interest. In 1987, for example, one allotment had 439 owners with the smallest heir receiving $.01 every 177 years and receiving $.000418 of the $8,000.00 appraised value if that heir’s interest were sold. Ross Swimmer testified that the BIA’s administrative costs for this parcel were estimated at $17,560 annually.

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1 Majel Russell, *Historical Background to Fractionated Ownership of Indian Trust Lands*, Intertribal Monitoring Association Presentation PowerPoint, Northwest Regional Meeting, November 21, 2008
2 25 U.S.C. § 2206(f)
3 Department of the Interior, Office of the Special Trustee for American Indians, *Budget Justification FY 2005*
5 Testimony of Ross O. Swimmer, Special Trustee for American Indians, United States Department of the Interior, before the Committee on Resources, United States House of Representatives Hearing on S. 1721, *The American Indian Probate Reform Act of 2004*. June 23, 2004
7 *Id.*
The probate of these fractionated trust assets is also an expensive function of the Department of the Interior. It was estimated that in 2008 an average probate cost approximately $7,800, and approximately 3,500 Indian owners of trust assets die each year.\footnote{Id.}

To address fractionation, Congress amended the Indian Land Consolidation Act with the passage of AIPRA in 2004.\footnote{25 U.S.C.\S\S 2201 - 2201} While AIPRA ends the fractionation of the already highly fractionated interests the GAA continues to fractionate all allotment interests of 5% or greater.\footnote{25 U.S.C.\S 2206(a)(2)(B)} The drafters of AIPRA recognized this problem and provided authorization and appropriations for estate planning to further reduce or stop fractionation.\footnote{25 U.S.C.\S 2206(f)(4)} Without that funding, the allotted land base will continue to fractionate over generations, creating millions of new interests that will require substantial management and add significant costs to the Department.

Who We Are: The Institute for Indian Estate Planning and Probate (Institute) is part of the Center for Indian Law and Policy at Seattle University School of Law (\url{www.indianwills.org}). The Institute was established in August, 2005, and is the only national, non-profit organization developing projects which deliver free estate planning legal services to trust land owners and tribes nationally. With the mission of assisting Indian people, the Institute develops projects that provide free estate planning services to trust land owners; provides training to tribal members, governmental officials and the legal community on the provisions of AIPRA, estate planning and the probate process; and serves as a clearing house that provides information via our website and published materials. The Institute has been uniquely successful in achieving those goals.

A Proven Success: In 2005, the Institute was the recipient of a one year, $500,000 Department of Interior Pilot Project contract and the results clearly indicate that estate planning is a highly effective tool in reducing and eliminating fractionation.\footnote{Supplemental Audit Report under Task Order SEA-0004443 under AIPRA FY 2006 AIPRA Implementation Project, Phase II, Estate Planning Services Auditor, September 15, 2007} In a short nine month contract cycle, the pilot project served more than 1,100 clients, and at the end of the contract, 586 individuals remained on a waitlist. A subsequent audit by the BIA concluded our estate planning project reduced fractionation of Indian lands; prevented the creation of 4,640 new interests; removed 679 interests from the probate process entirely; and 83.5% of the wills executed reduced fractionation.\footnote{Id.}

The Institute has had projects in Washington, Oregon, Idaho, Montana, South Dakota, Minnesota and New Mexico. These projects utilize personnel who are specially trained on AIPRA, Indian land history, and in counseling Indian clients on ways to reduce fractionation of their lands during their life time and with an estate plan. The free estate planning services include wills, durable powers of attorney, health care directives, assistance with gift deeds, and land sales to tribes. Our project models vary depending upon need and available funds. We have developed a number of successful project models using law student interns and paralegals; private and legal services attorneys. We have established pro bono projects, and at Seattle University School of Law, we created the first Indian Trust and Estates clinical course in the nation. In total, our
projects have provided community education to over 14,000 Indian landowners, served over 3,300 clients, executed approximately 1,400 wills and 1,100 other estate planning documents and successfully reduced fractionation in approximately 87% of the estate plans.

**AIPRA Funding:** I appeared before the Committee in 2009 to request your assistance in providing full funding to implement AIPRA. We are grateful that the Conference Report on H.R. 2996, the Department of the Interior and Related Agencies Appropriation Act for 2010 directed the BIA to utilize funds that were included in the OIP account and the Indian Land Consolidation account for estate planning assistance as provided for under Section 207(f) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)). This section of AIPRA authorizes the Secretary to enter into contracts with non-profit entities to provide estate planning and probate services to owners of fractionated interests in allotments. Over the last several months, we have attempted to work with the Department to determine how the available funds would be used to carry out the implementation of AIPRA, but we have not had any success. To our knowledge, the BIA has not initiated any effort to enter into contracts with non-profit entities to provide estate planning and probate services in 2010.

We note that the Department’s budget request for 2011 reports that the [BIA] “is actively engaged in implementing” AIPRA, including the provision of probate services. The request for 2011 is for more than $13 million and includes 159 FTE. Virtually all of the funds and FTE appear to be directed at coordination with the Office of Hearings and Appeals in probate proceedings. In addition, the 2011 budget request includes $1 million for 5 new FTE to implement AIPRA and the Indian Land Consolidation Act. The BIA proposes to use these funds and FTE to provide:

> “educational information regarding the authorized provisions within AIPRA, information on lifetime transfers such as consolidation agreements through gifts, exchanges and family trusts, through probates and forced sales. It will also include information to tribes on monetization and in writing probate codes. This will be accomplished by creation and dissemination of brochures (in English and native languages), partnering with tribal colleges and tribal organizations, conducting community meetings and via public news sources such as local newspapers, radio and the internet.”

The BIA also plans to use the funds and FTE to:

> “pursue partnerships with Indian organizations, various Indian land clinics, private attorneys, and legal aid groups to further research cost effective actions regarding estate planning. The initial push is to help more landowners complete estate planning and will drafting.”

The Department’s proposed budget, while laudable, will not meet the needs of Indian Country nor will it reduce fractionation or probates and, consequently, will not reduce related costs. The

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14 Budget Request for the Bureau of Indian Affairs for 2011 at IA-RES-7.
15 Id. at IA-ILC-3 and 4.
16 Id. at 4. (Emphasis Added)
2011 BIA budget request does not provide any detail on what level of funding may be directed toward estate planning and will drafting. With all due respect, we do not believe that there is a need for research regarding estate planning and will drafting. It has been seven years since AIPRA’s enactment and there is an acute and urgent need for action to fully implement its provisions. Through our various projects, we already know the most cost effective means of providing estate planning services to Indian clients. We know that face-to-face consultations are necessary with clients for effective estate planning and that those meetings often take place in a client’s home or hospital room. We know that with informed counsel, clients will often choose plans that avoid fractionation and even probate. We know that Indian people often need wills that are valid under tribal and state as well as federal law, and we provide that service. We agree that education is important. That is why our programs have reached over 14,000 Indian land owners in the last five years and our website is designed to provide information specifically to Indian land owners, tribal leaders and attorneys.

Cost Savings: For each interest that estate planning reconsolidates or removes from the probate process entirely through gift deed or tribal sale, the government will save money. Costs will continue to increase with the exponential growth of fractionation.

Appropriation Request: Year 1 - $750,000.00 – Personnel, travel, office and administrative costs; continue and expand the summer intern project; reestablish project for South Dakota Tribes.

Year 2 - $1,000,000.00 – Personnel, travel, office and administrative costs; maintain existing projects, reestablish program for Minnesota tribes and establish Indian Estate Planning Clinics at 5 law schools.

Year 3- $1,500,000.00 – Personnel, travel, office and administrative costs; maintain existing projects, expanded expansion of summer program and establish projects for Navajo Tribe and Montana tribes.

Year 4 - $1,750,000.00 – Personnel, travel, office and administrative costs; maintain existing projects, establish 5 new clinical programs and a project for Arizona tribes.

Year 5 – $2,250,000.00 – Personnel, travel, office and administrative costs; maintain existing projects and establish projects to serve scattered reservations with estate planning needs.

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