

**Bureau of Indian Affairs  
Working Session for Bureau of Indian Affairs Employees on  
the Revision of Four Land Management Regulations  
(Grazing, Trespass, Agricultural Leasing, and Rights-of-Way)**

**Crowne Plaza Hotel, Billings, Montana  
August 30, 2011**

Facilitators Dexter Albert, Lucy Moore, Jason Hurd  
Notetaker: Jason Hurd  
BIA Central Office: Margaret Treadway

**Welcome and introductions:** Ed Parisian, Regional Director, welcomed the group and expressed his hopes for a productive day. The revision of these regulations is long overdue, he said, and he urged BIA employees to share their knowledge and experience in the discussions.

**BACKGROUND:** Margaret Treadway, Office of Regulatory Affairs and Collaborative Action (RACA), welcomed the group of 45 BIA employees and expressed appreciation for the participants taking time out of busy schedules to give the agency guidance on how to proceed with the revision of these four regulations: Grazing, Trespass, Rights-of-Way (ROW), and Agricultural Leasing. She acknowledged that the regulation revisions were long overdue and encouraged BIA employees to share their knowledge and experience in the discussions. This working session concept is new for the department and is designed to allow BIA staff and tribal voices (both government and allottees) to have some input into the revisions before the regulation drafting group takes over.

She also offered background on the regulation revision process and timeline. The first drafts were developed in 2005 primarily by BIA and OST (Office of the Special Trustee) subject matter experts. At the first consultation, the tribes told the agency that dealing with so many draft regulations was overwhelming, so the process was divided into two phases. For phase I the administration prioritized business and residential leasing, as well as a new component for renewable energy. Consultation on those regulations is complete and publication should be in early 2012. These four regulations – grazing, trespass, ROW, and agricultural leasing -- make up the second phase. They will not be complete before the 2012 election, because of comment period requirements and the fact that regulations are routinely not passed in the final months of an administration.

The Bureau has chosen to use this time to undertake this new collaborative process that involves tribal voices prior to drafting. Michele Singer, RACA Director, and her team will take input from these work sessions and form workgroups to start revising the regulations. They will also look at new laws and cases for their applicability to the regulations. The Office of Regulatory Affairs and Collaborative Action will hold consultation on the drafts before they are proposed for public comment to ensure that tribal voices have priority. After revision of the drafts, they will be published in the Federal Register for public comment. Assuming drafting begins early in 2012, consultation would occur in early 2013, with a final publication date later in 2013.

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All this is dependent, she explained, on political leadership. She hopes that these work sessions will also build support for the case that this is critically important work and deserves top priority. She added that she will be glad to hear about any other issues that participants have with other regulations, so that they can be added to list.

**General Discussion:** BIA employees had questions on the following issues:

- Status of Subpart 162 Owner's Lease: Subpart 162 is still in the works, but it does not have the priority right now to be pushed through.
- Role of APRA: APRA is in effect, but staff has no direction about how to implement it or how it relates to the regulations. It seems as if Office of the Special Trustee (OST) should be part of this conversation.

**INTRODUCTIONS:** Facilitators Dexter Albert and Lucy Moore introduced themselves and reviewed the agenda and the materials. They asked the 45 participants to introduce themselves.

**OVERARCHING THEMES:** Prior to these working sessions, facilitators interviewed eleven people who were familiar with the regulations and who represented a broad geography and range of experience. They included attorneys, academics, allottees, and BIA and tribal subject matter experts. From these interviews, the facilitators drew over-arching themes they believed cut across the four regulations:

- Inter-relatedness of the BIA, the tribe and the landowner
- Need to support tribal self-governance
- Need for simplified, streamlined regulations
- Need for consistency nation-wide and flexibility on the local level
- Need for timely permitting and leasing processes with deadlines
- Need for enforcement and remedies
- Need to streamline the appraisal process
- Need for more resources and more staff

Participants agreed with these cross-cutting themes, and suggested others:

- **Clarity and efficiency in consent process:** With multiple landowners, gaining consent can be almost impossible. Agency staff need clarity on what constitutes consent, how to communicate with landowners, what is the standard for "whereabouts unknown", etc. Some agencies define consent as including the total interest, including fee interest, but fee interests are not leased on agricultural lands. Calculating majority consent may be done differently in different agencies. "We never know if we're doing it right."
- **IBIA decisions:** BIA staff need direction about interpretation and enforcement of Interior Board of Indian Appeals (IBIA) decisions. For instance, an IBIA decision ruled that a landowner could partition land without consent. It can also take up to two and a half years to get a decision, meaning that staff are dealing with appeals from two years ago.
- **Complexity:** The rules and regulations are so complex that it is difficult for the agency to prevail in the decision it makes. The superintendent is often overruled because of these complexities. "The agency needs its own lawyer just to tell us how to implement the regs."

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- **Training and course development:** Staff need training to understand the regulations and be able to use them properly and effectively. This training is currently done by outside contractors who are not subject matter experts (SMEs). The BIA could save up to 14 million dollars and have a better product if they used SMEs at the region and BIA staff to develop courses and give the trainings. This region already has developed a course in reading legal descriptions for its employees. Distance learning could also be utilized to reach staff.
- **Differences between regions:** Regulations must be able to be adapted to the different tribal conditions in different regions. Tribes in the Great Plains have a lot of fractionated interests. Some tribes have treaties that confer certain rights to them. Some tribes are compacted or contracted tribes. And there are enormous differences of natural resources, wildlife, agriculture, etc, from region to region and tribe to tribe.
- **Need for handbook:** The handbook can offer more detail than the regulations. The regulation and the handbook should go hand in hand so that it is clear how the handbook is interpreting the rule. Everyone is going to interpret a regulation differently. A handbook is critical in giving the BIA employee guidance and establishing some consistency in the application of the regulation. As soon as a law or regulation is adopted a procedures handbook should be prepared. “That would make our jobs much easier.”
- **Know the law:** It is easier to understand the regulations if you know the law they are implementing. Many people who are trying to deal with the regulations have not read the law. Training could include a section on the law.
- **Need for leadership:** Many spoke of the frustration of regional isolation. A lack of consistent leadership and direction from Central Office is demoralizing and causes confusion. Requests to Central Office often go unanswered, even receipt of the request is not acknowledged. Each Assistant Secretary for Indian Affairs (ASIA) seems to have his own agenda, and the regions feel ignored and abandoned. Leadership and policies are needed that survive administrations.
- **Revisions are long overdue:** Some in the regions worked on revisions to these regulations in the past, but after six or more years, still no draft has come out. “We feel like all our work has been thrown away.”
- **Use of draft regulations:** Given the long wait for regulation revision and adoption of new regulations, some asked if draft regulations could be used in the meantime. For example, it would be very helpful if the draft regulations for wind energy development could be used now, since it may take years for the draft to become final. Some managers have used draft regulations in their decisions, but it is not clear what is allowable and what is not. “We are trying to draft a lease with wind energy provisions and now we’ve been told we cannot use draft regs to guide any decisions or daily case work.”
- **Need to protect the land:** Participants pointed out that it is critical to remember that the mission of the agency is to protect tribal land. If the land is destroyed or lost, it has no value and has not been protected. Both BIA and tribal range managers, for instance, need to understand the value of good range management. A handbook could provide some basic information and guidance.
- **Relationship between regulations and tribal laws/resolutions:** BIA staff needs consistency and balance in working with tribal laws, ordinances and resolutions, and they find little guidance in the CFR. For instance, BIA staff may be designated as a livestock

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officer for the reservation and therefore be required to levy penalties from tribal law to enforce against trespass.

- **Reorganization of the BIA:** The current structure of the agency derives from the Indian Reorganization Act of 1934 and is out of date. Branches like forestry and realty have their own regulations and funding and can't coordinate the way they should. Regional directors and superintendents can't make the decisions they need to. A regional director should be able to determine the appropriate personnel needs and funding for the critical issues in his region, rather than being bound by the rigid staffing requirements now in place.
- **Clarity of definitions:** "Land," for instance, appears many times in the four regulations, but what kind of land – agricultural, pasture, range? Enforcement and other actions will vary depending on the type of land. Animal trespass, for example, is not as strong in the lease as it is in the permitting section. "Without clarity about which land is in which regs, we get real errors."
- **Challenge of enforcement:** The due process given to parties makes it almost impossible to be effective in enforcement and compliance. The result is a lot of frustrated landowners who see the BIA as a bureaucratic machine unable to do anything about their trespass issues. "It becomes a shell game. They move the trespassing animals from one piece of land to another, and we just follow the animals around and write notices."
- **TAAMS:** The system is designed to streamline the process, but it has its own requirements and limitations. TAAMS is not keeping up with the regulations.
- **Acquire fee interest from trust titles:** Tribes could petition congress to propose a law to acquire the fee undivided interests in trust tracts in order to consolidate all undivided interests back into the trust. The problem is now that many Indian allotments have a growing percentage of fee interests as probates that allow for non-Indians to acquire ownership. They could be given fair market for fee interest. The fee portion of trust allotments has not and cannot be leased by BIA so they do not collect for such interests and BIA says they tell the lessees that they need to settle their interests directly with fee owners.
- **Update forms:** Permits need to be evaluated and updated in order to comply with the requirements under CFR. The current form doesn't have enough space to put in all the required information.
- **Appraisals:** Calculating fair market value for pasture and range land must take into account the location and condition of the land. "Montana is not Wyoming. Do it by reservation rather than for the whole region."

**Small Group Reports:** The group of 45 broke into four groups. Each group spent 45 minutes on each regulation, discussing the problems and suggesting solutions.

### Trespass:

- There was consensus in all four groups that a separate regulation for trespass is needed. In addition, separately defined provisions for trespass need to be included for the different disciplines -- forestry, grazing, etc.
- Notice of trespass should be given for range units or even reservation boundaries, rather than for individual tracts.

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- Right now, some trespassers simply move their livestock from parcel to parcel throughout the reservation and a new notice must be processed each time; they trespasser gets away with it by moving to the next field with impunity.
- There should be broader authority in issuing constructive notices, with the caution that these cannot be issued all the time.
- Shorten and streamline the process to better respond to circumstances in the field, while taking the necessary time not to make errors.
  - Some actions should be taken within 24-48 hours instead of 10-30 days.
    - Yet, keep in mind the time needed for internal processes
  - Need to change the timelines on redemptions – now, it's up to the point of sale but there is preparation that goes into organizing a sale; there should be a 'no turning back' point, like 3 days before the sale so as not to waste department time and resources for organizing a sale that never happens because the trespasser has until the final hour to redeem.
- Monetary damages are not high enough to be a deterrent to trespassing.
  - Be able to assess true penalties and keep up with the economics
  - Define how to calculate/assess damages and recoup costs
  - Need to know amounts of penalties right away/upfront.
    - Could even be automatic fines – such as a traffic ticket; you already have a set amount to pay unless you challenge the ticket
  - Assessing liquidated damages versus (or plus) penalties (principal x 2) needs clarification
  - Should avoid daily counts – can we rely on averages over a given period of time?
    - One simple calculation can be \$1 per head of livestock per day of violation
  - Add administrative costs to assessments
- Eliminate appraisal bottlenecks.
  - This is required now; yet, there are field experts who can also make an assessment and determine a monetary value outside of a formal appraisal.
- Leverage tribal laws and resolutions to give BIA more teeth in enforcing trespass.
  - Make it clear that BIA can use federal magistrate system to enforce trespass
- Strengthen relationships between agency and field staff and higher up administrative personnel, and also between different departments, to increase coordination and efficiency.
  - Some interpretations seem to indicate the trespass can't be enforced on Rights of Way. Service Line trespasses need to be addressed too.
  - The Solicitors Office and US Attorney often refuses to prosecute because of an arbitrary monetary limit. They seem to have a lack of training and personnel too.
  - Likewise, US Treasury won't go after debts unless the amount is above \$5k
- Regulations, policies and procedures need to be clear and concise and should transcend all situations.
  - Emergency Actions should be defined and spelled out.
  - Define and clarify lease violation versus trespass ~ are they both on the same action, interchangeable?
  - Day-to-day procedures handbooks should be made available to everybody within BIA and to tribes

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- Fee interest and single-owner lands need to be held accountable the same way too.
  - One way to deal with is to force partitions, or bring back into trust
- Bonding requirements are needed; now, one company can use one bond for the entire area. A new bond should be used for each site because one disaster can use up the amounts of a bond, and the remaining areas will be uncovered.
- Surveys are often lacking or inaccurate. Need to define what's acceptable ~ gps versus traditional land surveys, for instance.
  - After new surveys are done, what to do about erroneous parcels and encroachment?
- Intentional trespassing needs to be treated more harshly than inadvertent trespassing.
  - Sometimes, there needs to be penalties for both livestock owners and land owners because they give unauthorized permission/access
- Need to figure out a way to deal with homes that are no longer under HUD purview and assumptions of automatic renewals of leases.
- Feral horses are a big problem on tribal lands
- There might be no statutory authority for trespass, so needs Secretary level action to establish trespass regulations outside of Agriculture and Forestry
  - Court decision or statute needed; right now, the issue is beyond regulatory

### Right of Way:

- Survey requirements and standards for survey technology are needed.
- Waiving appraisals in some cases would be in the best interest of the land holder.
- Regulations need to provide for gaining access to land-locked tracts, without angering those involved.
- Distinguish between commercial and resource development ROWs.
- Require a reclamation bond for large ROWs to cover potential damage to land.
- Regs need to define consent required for ROW – sliding, majority?
- Regs need to address piggy-backing on ROWs and ensure that the decisions are in the best interest of the landowner.
- The regulation and the handbook should go hand in hand.

### Grazing:

- Appraisals cause huge delays in permitting grazing. Employees asked for options to the present system. Advertising range units instead of using the allocation system could benefit the landowner. “We should abandon the standards and let the Range Con do it. He knows more,” said a frustrated participant.
- Bonds need revision. No need for payment bond if rent is collected in advance. But there is a need for a conservation bond or some funding source to restore damaged land. Bonds and letters of credit can be a hardship for many landowners; regulations could provide option for waiver. Bonds should not be returned if the lessee takes the improvements with him.
- Payment due date can cause unnecessary hardship on landowner if the annual renewal date and the grazing season are not coordinated. A renewal date of March does not allow

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enough time for notice, etc., before grazing season starts in June. A renewal date of November is preferable.

- Clarity of definitions is needed for several terms, including “you” and “we,” “grazing permit v agricultural lease,” “conservation plan.” Define range land as more than 800 acres and pasture land as fewer than 800 acres. Currently there is confusion between the two and the processes for dealing with each are, and should be, different.
- Regs need to address improvements to the land, and provide some incentive for the permittee to make improvements and leave them in place. As it is now, permittees pull up fences, plug up wells, etc, when they leave.
- Term of permits needs to accommodate, and coincide with, federal program timelines.
- Regs need to provide for collection of damages against those who damage the land.
- The 90 day notice process for consent causes delays, meaning that the landowner may even miss out on a grazing season. Other ways of providing notice could be: including the notice in the quarterly TAAMS mailings and notices in newspapers.
- The regs should provide guidance to dealing with tribal grazing resolutions. Currently, the BIA staff can be caught in the middle, asked by the landowner to enforce and forbidden by the tribe to do so. The resolutions can be politically influenced and implemented in ways that are not in the best interest of the land or the landowner. It is a delicate situation and one where the BIA staff need some clarity and authority.
- Subleasing, fronting and stand-ins are all practices that need addressing in the regs. The issue is the use of a grazing permit by someone other than the permittee. In some cases a lease may be bought by a tribal member at a low price and re-sold at a profit. Or, a permittee may sub-lease that permit to a rancher who puts his cattle on the land, even branding his cows with the permittee’s brand. The best use of the land and the best interest of the landowner should be the determining factor in how to handle these practices. Should the proof of ownership be the responsibility of the BIA?
- The BIA should have increased authority in this regulation to protect animal health and welfare, including checking for vaccinations, and acting to protect starving livestock and dispose of carcasses.
- The grazing permit form needs updating so that it meets the needs of the CFR.

### Agricultural Leasing:

- The regs should include a revised checklist applicable to ag leasing. The current checklist has inapplicable items and is missing needed items.
- Need a better system for tracking status of owner-managed. Owners may change without BIA being aware of the change. Need more, and more accurate, information.
- The regs should forbid issuing a lease or permit prior to payment, or if debt is not paid, including owner-managed land.
- Owner-managed land may require separate leasing provisions.
- The regs should prevent land from becoming land-locked and should provide ways to unitize use on adjacent tracts.
- Assessing penalties needs an updated clause.
- Lease forms are expired and the instructions outdated, and they should be consistent
- Lease compliance roles need clarification and consistency across agencies
- Conservation planning needs to be emphasized, land use provisions updated.

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- The regs need to specify who is responsible for what. Not delegating authority results in confusion about who is supposed to sign off on what.
- The regs need to provide for clearer accountability and better communications to address the current disconnect that plagues the BIA from top to bottom. A mechanism is needed to elevate issues to the Central Office for standardizing. The more communication, especially face-to-face gatherings, the better for staff morale and effective work product.
- Need policy for complying with TAAMS, as well as provisions for the improvement of TAAMS. A centralized technical pool and other ways to make the technology more effective should be included.
- Additional staff – liaison appraiser and paralegal – would be a big help to each office.
- Automatic approvals should be discouraged, maybe forbidden.
- Penalties should follow the market.
- Assessing annual administrative fees could increase revenue and staff for the agency.
- There are grey areas when it comes to contracted/compact tribes. Need clearer expectations on tribes' authority and responsibility.
- There is a need for better documentation of reviews, such as lease compliance reports. Often, the history is known.
- There is inconsistency in appraisal value/cost/price. Need a system to ensure bonding and/or provide an option to waive this requirement.
- Consent requirements need to be uniform across the regs.
- Allow utilized leases on contiguous tracks with common use. This could increase the value of the land and decrease the workload.
- Don't restrict use of USDA funds or outside money to improve trust lands based on lease tenure.
- Need a standard for direct pay.
- Need to address fencing.
- Cemeteries need to be encumbered/shown on title.
- Need to address animal health requirements. Crop land and animal land needs to be addressed separately.

### **Final Thoughts from Participants:**

#### **About the revision process:**

Many spoke of their frustration with previous efforts to revise regulations. They see those efforts as a waste of time, and now it seems as if it is starting all over again. Although there was appreciation for the chance to come together and talk about the revisions, there was a fear that it would "go nowhere." The hope is that the leadership will take these good ideas that came out of this session seriously, and that the regulations will be revised in a timely manner. "I've been through this before and we are still waiting for the changes." "I'm tired of meeting and nothing happening. We will probably be here in a couple years doing the same thing again." "We need to see real changes." There were also requests for feedback as the regulations are developed so that those in the regions can understand why certain ideas were accepted or rejected. "We want explanations for what changes are implemented and which ones are not."

#### **Participants offered their top priorities for regulation revision:**

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- **Remember the Bureau’s primary responsibilities.** First is to protect and preserve the assets. Cobell was a wake-up call for needed improvements. It is also a responsibility to improve the quality of life on the reservation. Agency staff interact with people whose daily lives are impacted by the BIA bureaucracy, and each employee should do what he/she can to make the system work better. Staff are acting as trustee and the regulations should do everything possible to benefit the land and those who own it.
- **Communication with leadership:** The Bureau – and hopefully the regulations – should encourage and facilitate the exchange of ideas and practices among agencies, and among the different disciplines. Agency employees need answers to their questions and they need consistent, timely decisions with feedback about the reasoning. They need leadership and support of their local level decisions.
- **Provide flexibility and local empowerment:** The revised regulations need to protect us and show us what to do within the law, but they also need to provide for “wiggle room.” All agencies have different needs and priorities, and the regs should give staff leeway to apply them appropriately. The legal decisions handed down should be sound and consistent, and should result in empowering agencies to make decisions at the local level and be supported.
- **Training:** Without training, implementation will be inconsistent and ineffective. All levels of staff in all offices need to be trained and honored for the knowledge and experience they bring. In one agency, 40% of the workforce is eligible to retire in the next two years. New employees need to learn from those with years of experience. Some recommended this kind of information sharing every two years to capture new employees on a regular basis. “The institutional knowledge in this room won’t be here forever. We need to take advantage of every opportunity we have to meet like this.”
- **Potential redistribution of funds:** The group had ideas for redistributing scarce funding and for meeting shortfalls of \$14 million in 2012. That same amount is currently being spent on outside training vendors. If the Bureau developed training programs with regional SMEs, the trainings would be more targeted, and those programs could be re-funded.
- **Consider an annual administrative fee:** An annual administrative fee on all kinds of leasing would help provide funding for departments.
- **Policy review:** Provide for a regular (annual) evaluation and review of policies at the field level, perhaps at gatherings like this one.
- **Update 166:** Update information about invasive plants, diseases, and how to deal with idle tracts, including how to set up and manage tribal farms.
- **Reclamation needs to be a priority issue.** Weeds and invasive species are becoming a big problem in many areas, particularly on and along ROWs. The regulations need to clarify responsibility for reclamation of lands.
- **Trespass:** Trespass should stand alone in its own regulation.
- **Science over politics:** Decisions about agency operations should be based more on science and less on politics.
- **Clarity of definitions:** CFR grazing resolutions and policies; Owner managed and owner use; constructive notice that is clear and defensible.
- **Clear language:** ROW needs updated, plain, clear language.

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- **Anticipate unplanned community development:** The regulations need to address the impacts of unplanned community development, which is a major problem especially for ROW.
- **Approve handbooks now:** Please approve the handbooks now so that they can be used. Revisions to them can happen later.
- **Share these BIA employee comments with the tribes:** They will inherit the same problems if they become 638 tribes.
- **Timely and innovative notice processes:** The regulations need to ensure that notice is timely and offer alternative processes for serving notice.
- **Know the law:** Those who work on the revision of the regulations need to know the law and understand it. The regs are an interpretation of the law, and that interpretation must make sense and be consistent. If a law is bad, it can be amended.
- **Learn about your region:** It is important to learn about a region when you first arrive. Ed Parisian spent time with staff at the agency level in order to understand the challenges. Others should do the same.
- **Please listen, Central Office:** All these good ideas need to be heard by Central Office. They should be here to hear what is happening at the agency level, how the regs are interpreted and enforced.

### **Others spoke about the value of the session and made suggestions about the process:**

- Sessions like this should be repeated regularly.
- We should include realty specialists and clerks.
- This session was more informative than many expected. It would have been useful for others at the agency. With a lot of BIA staff nearing retirement, it is so important to share knowledge and experience with the younger people.
- Good to get knowledge from people with more experience.
- This session was different because participants didn't just complain; they brought solutions to the table.
- It was good to have multiple regions and disciplines here. Everyone has a different way of doing things; there is a lot to learn from each other.
- Breakout sessions were very useful and could have been longer.
- Good to hear the similarities among different agencies and offices.
- OST and the Solicitor's Office should have been here. They make the decisions.
- There was a feeling of respect for each other in the breakout groups, even if there was disagreement.

*Summary prepared by Lucy Moore from notes by Jason Hurd. Please contact Lucy with any comments or questions. 505-820-2166, or [lucymoore@nets.com](mailto:lucymoore@nets.com)*

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Facilitator/notetakers: Dexter Albert, Jason Hurd, Lucy Moore, Yolynda Begay  
BIA Central Office: Margaret Treadway, Liz Appel  
Regional Director: Ed Parisian

**AUGUST 31: TRIBAL REPRESENTATIVES**

**Welcome and introductions:** Ed Parisian, Regional Director, welcomed the tribal members and representatives, and expressed his hopes for a productive day. The revision of these regulations is long overdue, he said, and he urged the tribal staff and members to share their knowledge and experience in the discussions. This day was to hear from the tribes, he explained; the previous day was for the BIA employees to discuss the issues with their leadership.

**OVERVIEW:** Liz Appel and Margaret Treadway, Office of Regulatory Affairs and Collaborative Action, welcomed the group of 50 tribal representatives and 52 BIA employees and expressed appreciation for the participants taking time out of busy schedules to give the agency guidance on how to proceed with the revision of these four regulations: Grazing, Trespass, Rights-of-Way (ROW), and Agricultural Leasing. They acknowledged that the regulation revisions were long overdue and she encouraged the tribal representatives to share their knowledge and experience with the BIA and Central Office staff present. This working session concept is new for the department and is designed to allow BIA staff and tribal voices (both government and allottees) to have some input into the revisions before the regulation drafting group takes over.

They also offered background on the regulation revision process and timeline. The first drafts were developed in 2005 primarily by BIA and OST (Office of the Special Trustee) subject matter experts. At the first consultation, the tribes told the agency that dealing with so many draft regulations was overwhelming, so the process was divided into two phases. For phase I the administration prioritized business and residential leasing, as well as a new component for renewable energy. Consultation on those regulations is complete and publication should be in early 2012. These four regulations – grazing, trespass, ROW, and agricultural leasing -- make up the second phase. They will not be complete before the 2012 election, because of comment period requirements and the fact that regulations are routinely not passed in the final months of an administration.

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Collaborative Action will hold consultation on the drafts before they are proposed for public comment to ensure that tribal voices have priority. After revision of the drafts, they will be published in the Federal Register for public comment. Assuming drafting begins early in 2012, consultation would occur in early 2013, with a final publication date later in 2013.

All this is dependent, Margaret and Liz explained, on political leadership. They hope that these work sessions will also build support for the case that this is critically important work and deserves top priority. They added that they will be glad to hear about any other issues that participants have with other regulations, so that they can be added to list.

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- Need to support tribal self-governance
- Need for simplified, streamlined regulations
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- Need for timely permitting and leasing processes with deadlines
- Need for enforcement and remedies
- Need to streamline the appraisal process
- Need for more resources and more staff

In addition, there were process-related suggestions:

- Include tribal voices
- Focus on the purpose of the regulations
- Listen to the participants and give feedback
- Make the sessions interactive

### **DISCUSSION OF OVER-ARCHING ISSUES:**

Need more tribal voices: Those present regretted that there were not more tribes represented at the session.

Respect for tribes: Session organizers were criticized for not putting the recommendation to include tribal voices at the top of the list, above. The speaker said that tribal voices need to be heard above all else, and he felt this was indicative of a lack of respect for tribes.

Need to listen: Many felt that the BIA is not listening to the concerns of the ranchers and the farmer about the impacts of regulations on their livelihood.

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Revision process: This process needs to be speeded up. Tribes can't wait for more meetings and consultations. "I hope we're not back at the same table talking about the same thing again in four or five years." Tribal leaders need to be the ones to change the regulations; they are the ones who know what is needed.

A participant asked to be a member of the working group that will work on revising these regulations. He had heard that the effort would include only BIA staff, but he felt strongly that it should include tribes, tribal leaders, ranchers and others who deal with these problems on a daily basis.

Attending consultations and working sessions like this one are costly to tribes and tribal members. They want to participate in the revision process, but need support to do so.

Change the paradigm: Currently the BIA paradigm is maximization of income for landowners. In order to do that, they are adversely impacting reservation economies, as well as the very resource or asset that is creating that income. The tribes' only resource that can improve their economies is land. The regulations need to enhance the land for the landowners, enable Indians, not outsiders, to make money from the land. The BIA's trust responsibility is to help Indians utilize their own lands, not simply make money from the land.

The paradigm needs to shift from maximization of income to preservation of assets. This will result in the preservation of the agricultural economy, and an improved management of the resource. "When you only look at income you are hurting people." There is an urgency to get these regulations revised so they will benefit the tribal lands and people. "We cannot wait for another election."

Role of the BIA: The Blackfeet recommended development of local policy at the regional level to cover things not addressed in the CFR or in tribal policy. For instance, a local agency should be able to develop its own consultation policy with the tribe.

Preserving the trust asset requires resources in the field to monitor the land, and that is lacking across the board. The BIA has discretionary authority to monitor for best management practices and help the landowner, lessee, or permittee to improve the asset.

The agency does not listen to the tribal committees. The BIA is breaking up range units and economic business is being run off the reservation. There are hardly any more cattle because of the BIA management. The AUM rate was raised, and permittees had to pay a two year back bill before they could get another lease. This is breaking ranchers, and leases will be cancelled. The BIA has scared business away. It seems as if the BIA staff are looking down on the tribal committees and dictating what they can do and can't do. "If leases are paid for, leave us alone and let us ranch."

Tribal land is not being taken care of. The BIA should work with tribes who have the resources to help.

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Some BIA staff want to help but they are strangled by the bureaucracy. They are punished if they try to help tribes, and that is not right.

Tribal self-government: The regulations should facilitate tribal self-governance, and that means individualizing the regulations to allow tribes to manage their own resources.

The current regulations say that in the absence of tribal law or rules, certain regulations apply. That clause cannot be lost in the revision process. Tribes must have the authority to supersede the regulations.

Some suggested that the Indian Agriculture Bill of 1993, which allows tribes to run their own range, farm and lease departments, should be the rule, and that threatening letters and trespass charges are not necessary. “We’re not little kids and we don’t need the BIA to police us.”

Need for consistency: The regulations are applied subjectively because there is no consistent interpretation. Each reservation has a different process. Interior Board of Indian Appeals (IBIA) decisions are not incorporated into the regulations. There is no reliable process for documenting when calls are made, what the next steps are, when and how to proceed. Agencies have too much room to develop their own practices.

Burden of regulations: A rancher explained that he is looking for someone to develop oil on his property, but the complexity and number of BIA regulations on allotments drives them away. Complying with the regulations takes too much time and money, the developers say. In contrast, BIA is being helpful in facilitating the development of wind energy on allotted land, maybe because that is a priority for the Obama administration.

A landowner complained that there are too many regulations. “You have to get permission for everything.” The tribe adds to the burden with taxes and fees, making it difficult to do business. People don’t want to do business on reservations.

When there is a solution to a particular problem, it takes too long to make its way through the system.

Rights of individual members: The regulations need to specify individual rights versus those of a tribal government. Individuals should be able to negotiate rates on their land. The BIA usually recommends a good rate, but the tribal government may lower the rate and almost give it away.

Impact of rates: Raising rates for leasing and grazing can have a detrimental effect on the rancher. If rates are too high he loses the income and the result is that non-Indians are able to get richer using Indian land. That seems to be a tradition on reservations. Ranching is our biggest economy, said a participant, and the Indian rancher is being broken. Irrigation and lease rates place too high a burden on the individual.

Personnel issues: Some feel that personnel at some agencies are not acting in the best interests of the permittees. A superintendent who is from the reservation he is supervising can be susceptible to local politics.

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Irrigation system issues: Several spoke of problems with irrigation charges. The US Treasury put a hold on a portion of a landowner's income because irrigation charges were not paid, even though the irrigation system was not working. Failing to get resolution after more than a year, he initiated a congressional inquiry, as a last resort. Although going to congress caused tension between the landowner and the BIA agency employees, it did result in an inspection of the irrigation system and resolution of the problem.

Another participant who ran a tribal irrigation system said that Indian irrigation projects are old and have not been upgraded. If any improvements were made, they were made by individuals. The land and the systems are passed from parents to children and are not governed by any business agreement. They are part of undivided interests and there is no incentive to make improvements. It is difficult to make people pay.

The systems are simple and don't require high priced engineers, but the tribe needs income for maintenance and operation. Bonding could help. Now if you have not paid your O&M lease, it goes to collections and the landowner is billed. For 40 acres the bill is about \$500 and the owner has to pay it even if the water is not delivered. The un-leased land is costing the landowner valuable income. But without fences and water and other improvements it is hard to lease the land. Irrigation upgrades need to be addressed in the leasing process. All reservations are suffering understaffing in their leasing departments.

ROW compensation: Landowners are also not being compensated fairly, or at all, for ROW particularly railroad and utilities which cause damage to the land. Many felt that ROWs should never be perpetual, but should be for a limited number of years. The consent process is flawed for ROWs.

### **GRAZING:**

The group voted following the break to remain in one large group rather than moving into breakouts to address each regulation separately. The group as a whole (approximately 50 tribal representatives) addressed issues specifically related to grazing.

AUM rates: The BIA needs to do an economic impact study. Tribes like Blackfeet that are furthest from the corn belt pay the highest AUMS. But they sell their calves in the corn belt, where the ranchers are paying the lowest AUMs. "So we are in a sinking ship."

On Pine Ridge there are 395 range units managed by the BIA. They are redoing every AUM for every range unit and getting exact fence lines. If somebody wants to take out a range unit or take away from a range unit, they usually allow this through the allocation committee. The AUM rate is \$16.85 for allotted and for tribal land, and the tribal land committee decides the number of AUMs within the range units. There are multiple users, and the tribe has talked about having two rating systems, for non-Indian and Indian ranchers. But this creates a black market, because the BIA does not have the ability to check on all 395 units. They are understaffed and can only respond to people who call in. They are going crazy trying to satisfy everyone. "Non-Indian rates would take away from our tribe – the ability for our tribe to survive. A lot of people require assistance from the tribe on a daily basis, and we have to find that money somewhere."

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At Fort Belknap the allocation process works pretty well, allowing members to allocate their range units. The Tribal Council uses an appraiser and sets the rate every year. Extra AUMs are put up for competitive bids and that helps with tribal income. The speaker spoke in favor of an appraised rate on Indian land.

Off reservation and reservation land are like apples and oranges. One is a tax based economy; the other suffers from high unemployment. The Indian rancher is priced out of the market by using appraisals that are done off the reservation. The Indian rancher cannot compete if they have to pay what a non-Indian has to pay, and a lot of ranchers will go under if this continues.

A lot of range units include land that can't be grazed. With such high rental rates, the rancher needs to be sure he is paying for the exact amount of grass that is actually available. Bonding would be an additional burden on the already struggling rancher, just like another rate.

Outside cattle: At Blackfeet, staffing is a huge problem. There are more than 75,000 tribal acres and no tribal range con; the BIA has only one. Congress has set up a system that is doomed, said a participant, and they are responsible for tribes going under. Tribes try to do the best they can, but are failing. "Cattle with trichinosis are brought onto our land from other parts of the country, and we can't keep track of them. Now we get the blame. We are stuck with the stigmatism of having trich cattle on the reservation."

Crow experiences the same problem. Indian cattle are checked for diseases, but when non-Indians bring cattle in from Wyoming, they are not checked in the same way.

One difficulty most tribes face is outside cattle. Non-Indians – not Indians -- have become millionaires on Crow land. The land resources are rich, but it has been impossible to find a way for tribal members to maximize revenue on their own land. There is no monitoring of the leases and subleases and no standards for enforcement. The result is outside cattle and non-Indians maximizing benefits on reservation. The Indian landowner gets the same rate, but can't take advantage of the huge cattle productions of the non-Indian. Tribes need to discuss this issue and decide whether or not to put restrictions on those practices and insure that there are legitimate, honest operators on leased land. A participant suggested a good policy would be to take care of Indian producers first and then put what is left out to bid. "We still have modern day range wars going on with this issue."

It seems unfair to the tribal member who is required to write down brand, numbers of cattle, and other information, yet his non-Indian neighbor brings in semi loads of outside cattle. "How does he get by the system? He brings in outside cattle, but I was told I cannot do that."

Need incentives for improvements: In the past it was possible to put range improvements on land with the Superintendent's permission. Now consent and ROW is required and it is impossible to get improvements made. The result is that Indian land values are going down. There is also confusion about how long the ROW lasts, and who owns the improvements. Also, said a participant, the individual should be able to appeal to the Superintendent or the Tribal Council.

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The first duty of the trustee is to preserve the trust asset. If the focus is only on profits, that trust responsibility is being neglected. The BIA needs to reexamine the way species impact the land, and make it easier for producers to improve the land. That will result in an enhanced value of the asset.

Fractionation: On Blackfeet the ranchers are the landowners, but the lands are so fractionated that many tribal members get only a \$5 check. It costs more to cut the check than it is worth. When there are reserves, people get the reserves from an individual who is not a producer. Reserves are breaking up the range units. If a piece of land is reserved, then a certain percentage of the people should be producers. A lot of good leases are being fractionated. There are gates everywhere.

Bonding: Only the wealthy can go into ranching at Blackfeet, because of the bond requirement. Not many tribal members can secure a bond. The bond should be waived or eliminated. The way bonding is implemented at Crow the landowner feels penalized for someone else's non-payment of leasing. They suggest that if someone doesn't pay a lease they should be barred from leasing land further, instead of penalizing the landowner.

A landowner who had bought part of an allotment was required to put up \$ 6,000 in lease and bond in order to get a one year lease on the property. He felt that there should be a regulation that, if he has ranch infrastructure, then the lease next to it should stay with the ranch if he takes care of the land. Once a lease is paid for, "I should be able to do what I want as long as I don't hurt the land."

Most leases are paid in advance, so many questioned why a bond was necessary. Furthermore, if the lease is cancelled, the bond is sent to the Treasury for delinquent debt on resources you did not even use.

Crossing permits: Access to range units is a big issue at Blackfeet. Crossing permits are only good for one year, but range permits are good for ten years. The Dawes Act encouraged Indians to be farmers and ranchers, said a participant, but now it seems they are working against the Indian, denying him access to range units. The crossing permit should be eliminated in the CFR. The BIA should guarantee access for landowners to their range units. Non-member ranchers should have crossing permits to cross an Indian range unit. "They cross my range unit anytime they want, yet I need ROW to improve the road to my place."

Support for landowner: A participant told about her sister's land on the Crow Nation. She didn't know where it was and the BIA drove her to it over rough roads and through lots of fences, and old barbed wire lying around. The sister has a four year lease, but somebody has been using the land, maybe through an illegal sublease. There was salt and fresh waste, but the trespassers must have known the BIA was coming and taken the cattle out at the last minute. Landowners need help from the BIA or the tribe. The sister has a competent lease, with no other heirs, and could develop skiing or other uses, if she had the education and the help to do so. Usually, in cases like this the landowner sells the land, not knowing what else to do with it. "We need somebody to come in and offer help and support for us landowners."

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The same kind of story came from Pine Ridge. The Oglala Sioux have un-leased land, but they find fresh waste there and salt there, too. But when the report is made, the cattle are gone.

Conflicting authorities: Sometimes tribal policies and laws conflict with CFR. They are not equal.

Coordination with USDA: In 2006 the BIA signed an MOU with the USDA, agreeing to work hand in hand. Those in the regions desperately need working agreements at the regional level to implement that coordination to preserve regional assets. Because BIA does not offer conservation or farm support, it is critical that the USDA play that role in managing resources. The regulations need to be aligned with those various programs so that Indian producers can have access to this help.

Education component in grazing regulations: The grazing regulations include an education program with scholarships, internships, and reimbursement of student loans. Few people know it is there and it has not been implemented. "It is crucial that these programs be funded and implemented so that we can build our own capacity."

Subleases: There was much discussion about subleases. In some cases, tribal members were in favor of them. In other cases, they felt they were illegal and damaging. A landowner was concerned that he lost his lease because he did not have his own cows and let another Indian run cows.

### **Right of Way**

Terms: Many spoke of the need to insure that ROWs are not perpetual, but are renewable at regular intervals. Later generations need to have the benefit of that ROW income. The value of ROWs increases with time, so the rate should change as well.

Cheyenne River Sioux Tribal constitution has a maximum term of 25 years on easements and ROWs. But the BIA refused to consider anything less than perpetual for a power company ROW. The regulations should include a provision that the jurisdiction of the tribe shall not be diminished, and require consultation with the tribe prior to signing agreements for ROWs and easements. In this particular case there were also conservation practices in place that should have triggered a denial of the ROW.

Maintenance: The group agreed that regulations should require and enforce maintenance of ROWs.

A participant said that he was having a terrible time trying to get rid of spotted knapweed on an expired ROW. Another complained that he has been fighting the weed for five years on BIA roads through his property. The BIA told the County to spray, but they didn't. He wanted to get goats but was afraid to get into the crossing permit process. "My hands are tied and the weeds are still growing."

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Importance of access: A non-member doing business on the reservation observed that closing roads and denying access devalues the reservation land. She recommended that the BIA and tribes need to do more to protect existing assets.

Appraisals: The requirement for appraisals for ROW is a burden and sometimes makes no sense. “If I want to give ROW to my brother, I have to have appraisal and that is ridiculous They have to hire a professional surveyor, which is too expensive for individual landowners. Plus, the language is outdated: A lot of ROW is still appraised for the highest and best use of land, which is grazing, but you might have a low value on the ROW because of that outdated standard. Policy and regulations both need to be changed to address this.

There were other examples of ROW inequities. A company crossing tribal land pays the historical rate that has never been changed. They never get a new appraisal, and the amount they pay is a fraction of what they will generate from the ROW. “A lot of revenue is being made on Indian land.”

Risk of ROWs: A tribal member described a bad experience with a ROW. His father had granted a ROW to a non-Indian friend, whose son was involved with drugs. There was a lot of traffic night and day, and homes in the area were robbed, but because they had the ROW there was nothing the landowner could do. Luckily the ROW expired.

Need for ROW Exclusions: A participant asked that ROW requirement of survey and appraisals be waived for conservation projects. If an individual is developing a spring or water source for livestock and has to put in a conveyance mechanism or pipeline to move the water to a tank, currently they need a survey and appraisal. This holds up participation in a conservation program that would ultimately help pay for that practice. There should be an exclusion for projects that add value to the property or add to the preservation of assets.

On Ft. Belknap, there are too many utility trucks traveling though Indian land to service electrical lines, but the landowner can't afford to put a line to his house. A ROW exclusion for power lines to homes should be part of the revised regulations.

Access to land: A participant told of inheriting his mother's land and the impossible process of getting access to that land. He had to use a road through tribal land that crossed a creek and was unreliable and hard on vehicles. He asked for ROW through fee land belonging to a relative, but the BIA said he had no right to go through fee land. He wondered if he should go to tribal court, but was reluctant to set a precedent. It is unclear to him who has the authority to grant a ROW. He is left with land he can't use, manage or live on. “The tribe gave me a home site 40 miles from the land I grew up on that I can't get to. I live somewhere I don't want to live, in a house I don't want to buy. Just let me get to my land instead of letting someone else use my land for nothing and I'm not even getting paid for it.”

Another told of a conflict with Pacificorp. His father died during the conflict over the ROW, and the son tried to become administrator through tribal court. In the meantime the BIA superintendent signed on behalf of the son and the ROW complete. The superintendent claimed

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to be getting the best deal for the landowner, but he knew that other tribes had done better. He suspected the superintendent was working with Pacificorp, not on behalf of the landowners.

Value of ROW: Reservation landowners do not reap the same benefit from ROWs that those off the reservation do. Off reservation, landowners are paid for volume of oil or electricity that travels across the land, but the BIA negotiates a flat rate. It would make better business sense to be paid for the volume of the commodity.

An attorney added that a class action lawsuit was filed last week, claiming that the BIA approved ROWs at a low value and the company receiving the ROW sold them to another company at higher value, speculating at the expense of the landowner. Another participant said that those who opted out of the Cobell settlement can sue again.

Landowners need education to understand the issues surrounding ROWs. Many landowners are older or uneducated and sign without knowing the implications of perpetuity and other conditions. They also are ignorant of the options for rental, for annual payments, for volume of product traveling on the ROW. They also need to understand that the ROW means loss of grazing land that is still included in the lease. Roads that are being built into oil sites should make annual payments, just as the leaseholder makes annual payments for the lease.

A participant described her mother's situation. AT&T wanted a ROW across land she owned but did not live on. She wanted compensation from the company but they told her it was good for the community and they didn't need to pay her. The BIA superintendent signed a competent lease on her behalf, giving her \$1.00 and saying that she did not live on the land and could not be found. The woman worked for the BIA. The woman died and the daughter is carrying on the battle. The judge ruled in favor of the BIA, citing an Oklahoma case to say that the state of Montana has jurisdiction over Crow Tribe.

Tribes should have authority to sign a ROW, not the Superintendent.

Impact to local economy: When a regulation is being revised or written, the BIA should ask the question: Does this adversely impact the local economy? Forty-seven permits were required for a tribe or individual member to develop wind energy on their land. The land surrounding the reservation is full of wind energy farms, because those developers only had to deal with nine permits. "We need realistic common sense applied to this, not just CYA."

### **Trespass:**

Need for, and challenge of, a single regulation for trespass: The group was in favor of a separate regulation to cover trespass. Currently it is too difficult to search through CFR to find trespass in different sections. The issues are very complex; the regulations should be simple enough for the lay person to understand and follow. It will be a challenge to write a regulation for trespassing when there are so many varieties of trespass. There are residential lots that are trust lots and the people living there are not paying rent; that is a trespass issue. Seeding can be a trespass issue.

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“Trespass is so complicated. It does need its own set of rules and regs, but I fear it will become so complex that we’ll be back at what we’re doing here trying to make it simpler to understand.”

Better documentation: Better documentation would create a paper trail necessary for tracking trespass cases. Trespassers should be required to sign something.

Enforcement: The BIA needs resources to manage the resources on a consistent basis and enforce trespass violations. Currently those resources do not exist and land is damaged by the time the BIA takes action. Trespassers get so much time before they get the notice and then the notice gives them more time. In the meantime, the trespass continues and the land is damaged further.

Trespass is difficult to enforce because of the different jurisdictions of fee and allotted land. Agencies need to cooperate.

Without standing to use the regulations, the individual landowner has to rely on the BIA. They can sue in tribal court, but they have to retain counsel and go through a lengthy process. Trespass is a big problem on Crow with oil and gas exploration roads that cross allotments. “We’re at the mercy of the BIA.”

For land in CRP (Conservation Reserve Program), the individual with the contract is penalized while the trespasser is given ten days to remove livestock.

Tribes need a mechanism for confiscating trespassing livestock. They need to be able to sell them if the trespasser doesn’t pay the penalty.

A former lessee planted crops on land without a lease because it was not leased at the time. The landowner had to hire an attorney because there was no one who would enforce against the farmer.

Horses are the over-grazing culprits, and nothing is being done about them. “With 100-150 horses on range unit, we turn them in and nothing is done. But someone has a few cows and they get turned in.”

Varieties of trespass: Participants had a wide variety of trespass examples, including trespass by livestock, by farmers planting crops on un-leased land or by “creeping” into adjacent land, by illegal use of ROW, by crossing property, by seeding, etc.

A coal company buys coal from the tribe at a very low rate. The trains taking the coal from the reservation go through the city and cause damage. The city is considering charging the tribe to run the railroad under or over the city. “The City of Billings can’t charge the Crow Tribe for taking coal already bought by somebody else through their city.”

Fencing issue: Regulations need to address fencing and how it should be done in cases where there is a mix of fee and trust land. Now there is no authority to make a non-Indian neighbor

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fence. Checkerboard areas are another challenge. Some questioned the BIA statutory authorities for their actions regarding trespass.

In general, farmers consider that the ranchers should be responsible for fencing. It needs to be clear who is responsible for fencing and gates. It may be possible to share the expense. Some felt that it should be the responsibility of the livestock owner to control his animals by fencing.

Crow leases specify that ranchers should control their animals.

Fencing is complicated by the fact that the land ownership is a jurisdictional mess. The trespass regulation will have to account for this and be written with great care.

It is important to have consent to jurisdiction attached to leases or ROWs, especially in cases where the lessee has attached fee land. If there is no fence, there has to be consent to jurisdiction.

Tribal authority: Tribes need to determine and assert their sovereign authority to govern their own lands. Some non-members claim to own land and maintain the right to do what they want because Indian laws don't apply. Tribes need to be able to enforce against trespass to defend themselves from cattle diseases and other damages to their resources. The Blackfoot Tribe has to test for trichinosis, but the state of Montana does not have the same requirement. Horses are trespassing in ROWs and the tribe is helpless.

When ROW is granted the BIA should be sure that lessees understand that tribal jurisdiction is intact, and that they are subjecting themselves to tribal jurisdiction.

The regulations should refer to tribal law, and the BIA should be able to help the tribes enforce their own laws.

Better coordination of agencies: The BIA, the tribe and the MT Department of Livestock need to coordinate for better management of the resource and better enforcement. The Department or the Tribe might have regulations that exceed those of the BIA and should be enforced.

On Crow, there are many different sizes of allotments and complex jurisdictional issues. Recently all the jurisdictions – state, tribe and BIA -- came together and impounded 800 horses that were trespassing. It was a success because they all worked together.

Seizure of livestock and personal property: There were two questions: What happens to the seized property, and what is the effect from the lenders point of view of that seizure on the opportunity to borrow?

Need for education: Landowners and tribal members need to understand the definition of trespass and other related issues like reserve right with land. A participant gave an example of a family he worked with for three years to help them manage their 320 reserve acres, a lot of it covered with trees. They fenced it, but not up to specifications. They grazed 20 horses on the land without a plan for how to feed the horses when they run out of pasture. The family needed

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education about the cost of adequate fencing, the amount of land that can sustain 10 horses, the consequences of trespassing when the horses go through the fence, and many other issues.

### **Agricultural Leasing:**

Coordinate length of leases: Multi-year contracts and USDA programs like the Conservation Reserve Program and the wetlands program require longer term leases – 10 years or more. Current regulation allow no more than 5 years for allotted land, and 10 years for other lands. Under tribal renewals the programs can sometimes be coordinated. Lease terms in the regulations land should be consistent with programs that make improvements on the land. Without being able to access those programs, tribes and tribal members' hands are tied. They are unable to make improvements, develop water, build roads and fences that would benefit the people and the land. Participants recommended the revised regulations provide for terms longer than 10 years.

It is especially difficult to coordinate when there are checker-boarded leases expiring at different times that are part of conservation program. It is also difficult to get signatures of multiple landowners, but it is required in the Farm Bill so that participants cannot later opt out.

Coordination among agencies: Federal agencies need to talk to each other. Each has different rules, regulations and ways of doing things. Natural Resource Conservation Service (NRCS), FSA (Farm Services Agency) BIA and others may all be participating in the program, but their data management systems all use different plans, numbers and forms. The MOU among agencies needs to be reviewed and updated so that it is more efficient and there is less duplication of effort. For instance, tribes have the best GIS system; USDA could contract with tribes to do GIS mapping.

The BIA is required to establish conservation plans for every acre. The regulations should require them to recognize conservation plans done by other agencies, and to use them to meet their requirement, if appropriate.

A participant gave an example: He went through the BIA process for a lease. Then he went to USDA and when through their process to enroll the land in the USDA conservation program. There was nothing that tied the two together. "My plan may be signed off on at BIA, but that is not documented and recorded on the title." There is nothing to show that the land is subject to the plan's requirements.

Appraisals should consider the potential earning under USDA and other programs. Lessees are qualified to earn payments through some USDA programs.

Participants suggested that stipulations could be added to the contract to address different agency requirements. Consent might not be necessary if the stipulations only applied to technical practices and improvements.

Hardship on landowner: On the Crow reservation, allotted lands are leased out and the lessees are getting rich. But a landowner is unable to use their own land for profit because of the tribal laws, or lack of laws and lack of enforcement.

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The regulations should include tribal preference.

Non-Indians are leasing a lot of land. Do they pay taxes on the profit they make on the reservation? The answer was yes.

Agricultural Resource Management Plans: The ARMP, established by law in 1993, is a vehicle for enhanced self-governance. A tribe with an ARMP can manage its own lands, set its own standards and enforce to protect its lands and people. The current regulations are broad and treat all tribes the same. The ARMP is like a giant zoning ordinance, allowing a tribe to make its own regulations. A participant urged tribal leaders to “take management of our own tribal lands. We have that power and we need to use it.”

Fort Belknap is one of the few tribes with an ARMP, and Assiniboine is working on theirs now.

Subleasing and fronting/stand-ins: Some felt that the regulations should prohibit subleasing and have enforcement provisions.

The USDA will not accept subleases and will only contract with the person leasing and operating the land.

At Crow, competent leases do not specifically prohibit subleasing.

It is common for a tribal member who has no intention of using the land to lease the land at a low rate, and then sublease to a non-Indian at a profit. Many felt this situation was out of control and needed better management.

There was a discussion about this situation. On the one hand a tribal member has the right to succeed however he can. On the other hand, it is not desirable for someone with no intention of using the land to outbid other viable bidders, who might be tribal members, too, and then turn around and give that lease to someone from Wyoming who brings in his cattle. It is a balancing act, to allow new bidders an opportunity while meeting the needs of long-term ranchers.

There were suggestions about how to deal with the “fronter/stand-ins:”

- make sure that the bidder really has the resources to operate the land
- require bid deposits or a certain percentage bond
- set market value higher in some cases depending on water availability, improvements, etc.
- establish a process for crop-sharing, rather than subleasing

### **FINAL THOUGHTS**

Hope for real results: Several participants said that they hoped there would be concrete results from this working session. “I hope all the things that were said will not be lost in the bureaucracy.” “Let’s not waste the comments that were made today. We have to act now. We can’t wait for a few years.”

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There was also a request for an update on the material that was gathered in 2006 in previous discussions about regulation revision. “This was like déjà vu for some of us.”

**Missing voices:** Some people that should have been here were not here.

**Need for more information:** Participants appreciated the information they received from the presenters, and especially from the dialogue with each other. It would be helpful to have the same kind of discussion focusing on state and county relations and jurisdictions.

The local agency needs to provide more information, as well. A rancher said he needs more information to make better decisions, but sometimes it is difficult to communicate and get answers. Sometimes it is hard to know what questions to ask. He thought he paid the minimum for a lease, but lost it to another landowner. He learned that there is no minimum.

**This working session:** Many would have preferred the BIA and tribal workshops had been held jointly, so that the Tribes would know what the agency people are thinking. It didn't seem fair that the Tribes didn't have the chance to hear what the BIA employees were saying. In fact, said one participant, the whole resource area should have been part of this discussion.

An alternative would have been to have the BIA and Tribes meet separately on the first day, and then meet together on the second day.

Some felt the session was too short and should have been at least one day longer.

At the next session, said a participant, both tribes and BIA should be involved together, perhaps in four sessions in two days, each session devoted to one of the regulations. That would strengthen the input, he added.

It also would have been helpful to prepare ranchers in advance with more self-explanatory materials.

Another suggestion was to have the technology available to be able to “vote on the spot,” so that everyone could see what everyone else thought, where the majority stood, etc.

Many were fearful that their comments would be lost. “We go into these revision discussions and when the regulations are published they don't look anything like what we talked about.” There were requests for follow-up and explanation about how the comments made today were used.

There was a request for a copy of the comments made today. (*Lucy will prepare the summary and it will be posted on the website. If anyone needs a copy emailed or mailed, please let Lucy know. Comments can also be made via the website.*)

**Help needed with leasing:** Ranchers had many requests for help with securing leases. Many felt the BIA handling of leases was inefficient and burdensome. A participant said that he received a resolution from the tribe for a lease, but now three years later, he still does not have the lease.

## ***Appendix F: Billings Session Summaries***

Tribes and individuals lose money, he said, because of inefficiency in the system. That needs to be fixed.

**Listen, understand, support:** The BIA needs to listen to the people they are serving more often. A participant asked how many decision-makers in Washington, DC, are producers of agriculture. These people, he said, are making decisions that affect our daily lives. They need to understand the problems landowners and lessees face in order to make the right decisions.

**Better communication:** There was plea for better communication between the BIA, the Tribes and the tribal members. It is all about communicating, and this was a good start, he said, but don't let it end here.

### **Closing remarks from Darryl LaCounte, Deputy Regional Director**

Mr. LaCounte expressed appreciation for the large attendance, and explained the invitation process that was as inclusive as possible. The timeline anticipates a final set of regulations in 2013, so there will be other opportunities to comment.

Margaret Treadway, Liz Appel and the facilitators thanked the group for their participation, for the time they took out of busy lives and for the passion they brought to the discussion.

*Summary prepared by Lucy Moore from notes by facilitation team. Please contact Lucy with any comments or questions. 505-820-2166, or lucymoore@nets.com*