

# IMPLEMENTATION OF THE DEPARTMENT OF THE INTERIOR'S LAND BUY-BACK PROGRAM

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## HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

DECEMBER 11, 2013

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## **IMPLEMENTATION OF THE DEPARTMENT OF THE INTERIOR'S LAND BUY-BACK PROGRAM**

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**WEDNESDAY, DECEMBER 11, 2013**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:26 p.m. in room 628, Dirksen Senate Office Building, Hon. Maria Cantwell, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON**

The CHAIRWOMAN. We will now to go to a second oversight hearing on the implementation of the Department of Interior's land buy-back program. This hearing is to dovetail with our last hearing, which was about the fulfilling of the promise of the Indian Reorganization Act in restoring 90 million acres of land that was lost as a result of failed Federal allotment policies and assimilation.

The Federal allotment policy created a situation where lands were allotted to individual Indians and as those lands were passed down through generations of families, the number of co-owners in a single tract of land grew exponentially. Each individual owner's interest grew smaller and smaller, and now over 90,000 tracts of lands in Indian Country and over 10,000 acres have multiple owners.

These single tracts of land can have tens, hundreds or even thousands of co-owners. This severe fractionation of land has led to the land going undeveloped as it is nearly impossible for an owner to get consensus with other co-owners on its use in productive ways.

Since 2006, the Department estimates over 45,000 tracts of fractionated land have generated no revenue for their owners. Additionally, the majority of these fractional interests are so small that even when the land is developed, the owners are only receiving a few dollars per year. While the Department has had a program under the Indian Consolidation Act to purchase and consolidate these interest programs, it has been woefully underfunded. Additionally, many tribes, including the Fort Peck Tribes, have established their own consolidation programs, using their own resources.

The *Cobell* Settlement is the latest effort by the Federal Government to resolve the problems of the fractionation and allow tribes to make use of those lands. The Department of Interior buy-back program was established as part of the historic *Cobell v. Salazar*

settlement agreement, which was ratified through Congress on the Claims Resolution Act of 2010. This Act created \$1.9 billion in funds to purchase these fractional interests. This significant investment will bring sufficient resources to these small, fractional interests and reduce the number of owners in any given tract.

Further, the program calls for giving these interests back to the tribe. This will allow money to be used for the benefit of the entire community. Moreover, individuals who are willing to sell their fractional interests will be provided fair market value. Thus, the \$1.9 billion of investment is intended to directly benefit individual Indian tribal members and the larger tribe.

The Department is required to carry out the buy-back program and distribute this \$1.9 billion within 10 years. That 10-year period began on November of 2012, when the *Cobell* settlement was finally approved by the Federal courts. It has now been one year, and so it is prudent to check in on what that development has been within the Department and to see how it is progressing.

The Committee is aware that no purchases have yet been made by the program, and the success of the program can be measured in many ways, but obviously one metric is how much of the \$1.9 billion has been spent and how many parcels have been purchased.

To be on track to expend the entire fund the Department would have to, on average, do \$190 million in purchases over 10 years. But we now have lost one year. So understandably, various people of tribal communities are concerned and want to hear about how the program is going to fulfill its mission in such a short time period.

This program seems to be a winning solution for everyone: the individuals, the tribes, the Federal Government. However, to be successful, it needs to make these purchases happen. So today the committee hopes to learn how the Department will do that and anything else the committee can do to help make sure this legislation has been implemented and this law is successful.

So I would like to welcome Mr. Roberts, who is the Principal Deputy Assistant from Indian Affairs, from the Department of Interior, and ask him for his statement.

Welcome, Mr. Roberts.

**STATEMENT OF HON. LAWRENCE ROBERTS, PRINCIPAL  
DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S.  
DEPARTMENT OF THE INTERIOR**

Mr. ROBERTS. Thank you, good afternoon, Chairwoman Cantwell, Senator Tester. Thank you for the opportunity to provide the Department of Interior's statement at this oversight hearing on the implementation of the buy-back program.

As the Chairwoman noted, approximately a year ago, the Department established the land buy-back program to work collaboratively with Indian Country with both tribes and individuals to realize this historic opportunity. Congress provided the \$1.9 billion to purchase individual interests at fair market value from willing sellers. The key to this is that every acre purchased through this program will be held in trust and restricted status directly for tribes. It is this important work that the Department feels very strongly

can only succeed with collaborative involvement of tribal leaders and their communities.

As sales occur, the program will contribute part of the fund, up to \$60 million, to the Indian Education Scholarship Fund. We are on track to send our first offers to purchase fractional interests by the end of 2013.

So I want to take a brief moment to acknowledge the work of Deputy Secretary David Hayes. He was a key participant in achieving the settlement. Deputy Secretary Hayes was personally involved in the program until his departure at the end of June of this year. And his leadership really helped to steer the framework of the program that is based on essentially four pillars.

The first pillar is collaboration. We know that the success of the program really depends on tribal leaders leading the effort. For that reason, it is important to work closely with tribal governments and for tribal governments to perform outreach efforts and to implement as much of the program as makes sense and is possible, given our resources.

Providing the assistance and outreach and information to individual owners is vitally important to the process. Through the successful leadership of tribal leaders, this program has the opportunity to expand tribal sovereignty by returning lands to tribes and essentially undo the harms that were forced on tribal communities through the allotment policy.

Another pillar that is key to the program is transparency, consultation and flexibility. So our aim is to work in as transparent a manner as possible, because not only of the importance of the program to tribes, but to ensure that the taxpayers know that the money is being spent carefully and wisely.

And so when the *Cobell* settlement was finalized last year, in November, the following month the Department established a program and released an initial implementation plan. The release of the initial implementation plan is important, because rather than just going forward with a plan and saying, this is how the Department is going to move forward, we consulted with tribes in January and February of 2013 and received comments on the implementation plan.

We have developed a framework for cooperative agreements through assistance of many tribes, including the Coalition of Large Tribes, COLT, which played a role in helping us develop the framework for cooperative agreements. We have issued press releases as we have moved forward on a number of matters, including the establishment of base payments, the issuance of evaluation plans, our revised implementation plan based on the comments that we received from tribes. We have announced our first cooperative agreement last week, and we are on track, as I said, to make purchases by the end of this year.

Efficiency, a third pillar of what we are looking at here, it is our goal to maximize the impact of the finite amount of money that we have, given the amount of time that we have to do so and the resources that we have been entrusted to address the problem. So first, what we need to do is we need to move quickly to each reservation. We have 150 reservations with fractionated interests. And we have to move fast. Appraisals are only good for a limited

amount of time. We have to ensure that the appraisals and the offers go out soon thereafter.

So we have heard from all tribes that they want us to implement the program as broadly as possible. We agree with that. But we also have to move quickly. It doesn't mean that we can spend 10 years at a single location or five years at a single location. We need to move the process through quickly.

Secondly, we decided to use a creative but sound methods to maximize the value of the limited funds, such as mass appraisals where appropriate.

And the last pillar that we have been working under is, essentially, good governance. We have had a strong governing structure internally, including an oversight board that is comprised of the Solicitor, the Deputy Secretary, Assistant Secretary Washburn, the Office of Special Trustee, and that board reviews all the decisions of the program. During these meetings, these occur more than once a month, we have had robust conversations and frank discussions about what we have learned during consultations and in meetings with individual tribes as we are moving forward.

While the governance process may have caused us to move a little bit more slowly on occasion, given that this is a major program with significant decisions, we think that they need to be addressed through deliberation. We have been entrusted with the ability to spend \$1.9 billion. We need to do it quickly but prudently. I think that is the sort of balance that we are striking.

We are getting a good structure in place, and that is acutely important.

I will conclude by saying what Assistant Secretary Washburn has often stated, and that is that tribal leaders are going to really decide the success of this program. They are the ones that are going to be most persuasive in their communities on how the transfer of that one individual's interest and land is going to impact tribes and have a lasting impact on future generations.

So we are extremely excited about the opportunity in the program to work with tribes. And I want to thank you for the invitation to testify today. I am happy to answer any questions that you have.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF HON. LAWRENCE ROBERTS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

## **I. Introduction**

Good afternoon, Chairwoman Cantwell, Vice Chairman Barrasso, and Members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) statement at this oversight hearing on "Implementation of the Department of the Interior's Land Buy-Back Program."

In 2010, Congress enacted historic legislation to ratify and confirm a settlement between Plaintiffs and the Administration in the *Cobell* litigation. The Claims Resolution Act set the framework to help reverse the fractionation of Indian lands that was set in motion under repudiated policies of allotment and assimilation.

Approximately a year ago, the Department established the Land Buy-Back Program for Tribal Nations to work collaboratively with Indian country, both tribes and individuals, to realize the historic opportunity. Congress provided a \$1.9 billion Trust Land Consolidation Fund to compensate individuals who willingly choose to transfer fractional land interests to tribal nations for fair market value. Every acre purchased through this Land Buy-Back Program will be held in trust or restricted status for Tribes. This important work can succeed only with the collaborative in-



volvement of tribal leaders and their communities. As sales occur, the Program will contribute part of the Fund (up to \$60 million) to the Indian Education Scholarship Fund. We are on track to send our first offers to purchase fractional interests by the end of 2013.

Fractionation of land ownership is a prevalent problem on many Indian reservations, locking up resources over many years. Fractionation is depicted in maps of Indian country that resemble a complicated jigsaw puzzle. It spurs the maintenance of elaborate records for tiny slivers of land interests and affects more than 150 reservations across Indian country where tracts of land often have hundreds, sometimes thousands, of owners. There are 2.9 million purchasable fractional interests owned by more than 243,000 individuals. Approximately 90 percent of the purchasable fractional interests are located within 40 reservations. Fractionated properties often go unutilized—hampering efforts to alleviate serious issues such as poverty and unemployment. The Buy-Back Program is one tool that can help remedy the harms inflicted on tribal communities by the repudiated policy of allotment by restoring tribal lands to tribal ownership.

## **II. Implementation of the Claims Resolution Act**

The *Cobell* Settlement was approved with finality on November 24, 2012, following the exhaustion of appeals through the U.S. Supreme Court. Less than a month following final approval, the Department of the Interior established the Land Buy-Back Program for Tribal Nations and published an Initial Implementation Plan. The Department released an Updated Implementation Plan in November 2013, which incorporates suggestions and responds to comments received during government-to-government consultations conducted from January to March 2013.

In recognition of the size and importance of the Settlement, Secretary Salazar established the Buy-Back Program in the Office of the Deputy Secretary. The Department also established an Oversight Board, chaired by the Deputy Secretary, to ensure senior level attention, and to facilitate accountability and coordination across the Department. Included among the members of the Oversight Board are the Solicitor, the Assistant Secretary-Indian Affairs, the Director of the Bureau of Indian Affairs, and the Special Trustee for American Indians. The Buy-Back Program Manager is responsible for leading and coordinating the efforts of the various offices and bureaus with responsibility for assisting in implementing the Program. The Program Manager reports directly to the Deputy Secretary and meets regularly with the Oversight Board.

During the past year, the Department has focused on establishing procedures, processes, and the necessary infrastructure to effectively and efficiently implement the Buy-Back Program. Interior is fully utilizing the expertise, services, and systems within the Department, especially in the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians. We are gaining significant efficiencies by automating and centralizing the land acquisition processes. Significant outreach, mapping and mineral evaluations have been completed or are ongoing at a number of locations. The Department utilized the expertise of the Appraisal Foundation, an independent-third party authorized by Congress to issue national appraisal standards and appraiser qualifications, to review the planned appraisal methods, and we have adopted the recommendations of the Foundation.

The Department will implement the Program in a flexible manner and continue to update its approach to reflect lessons-learned, best practices, and tribal involvement.

We have made progress over the last year in preparing to implement this unique and massive effort. We have discussed much of the progress in past public announcements and calls with tribal leaders. Through this process, we have:

- Communicated with 50 tribes (28 with jurisdiction over the most fractionated reservations).
- Met with 9 tribes at or near their reservations.
- Published an initial implementation plan which has been revised in response to consultation with affected tribes.
- Established capabilities, systems, and relationships to award cooperative agreements.
- Created and published cooperative agreement guidance and award templates in close coordination with tribal leaders and legal representatives.
- Began to evaluate nine cooperative agreement applications.
- Awarded a cooperative agreement to the Oglala Sioux Tribe, which has jurisdiction over the Pine Ridge Reservation (one of the most fractionated reservations).

- Obtained review of the Program's appraisal methodology by The Appraisal Foundation (TAF).
- Completed mass appraisal efforts on two reservations, resulting in fair market values for thousands of fractioned tracts.
- Completed direct appraisals for tribal priorities at one reservation
- Developed capabilities to create, print, mail, and scan landowner purchase offers at a substantial scale.
- Completed parcel mapping for 18 locations.
- Launched a substantive website, [www.doi.gov/buybackprogram](http://www.doi.gov/buybackprogram), to provide information about Program, especially for tribes and individual landowners.
- Hired 42 full-time employees and gained access to contractor staff for mapping, land research, and database support.
- Expanded our Trust Beneficiary Call Center to answer questions and register "interested sellers."
- Engaged in regional consultations and other tribal events, including: Minneapolis (January 2013); Rapid City (February 2013); Seattle (February 2013); Coalition of Large Tribes (COLT) Meeting (February 2013); Tribal Land Staff Conference, 3rd Annual (April 2013); Gathering of Nations (GON) Powwow (April 2013); Affiliated Tribes of Northwest Indians (ATNI) Meeting (May 2013); Landowner Trainings at Cheyenne River, Rosebud, and Pine Ridge (May 2013); COLT Meeting (June 2013); National Congress of American Indians (NCAI) Mid-Year Conference (June 2013); Montana-Wyoming Tribal Leaders Meeting (July 2013); Tribal/Interior Budget Council (TIBC) Meeting (July 2013); United Tribes Leadership Summit (September 2013); and ATNI Mid-Year Convention (September 2013).

We have also established important policies such as purchase ceilings on each reservation to ensure that each affected tribe can benefit from the program and also set minimum payments for land and mineral interests.

We recently published a solicitation to work with tribes with more fractionated reservations that is open now through March 14, 2014. Tribes with jurisdiction over these reservations are encouraged to submit cooperative agreement applications or expressions of interest to participate in the Program. We will continue to review applications on a rolling basis. By using this approach, tribes will help determine the timing and sequencing of Program implementation. And the Department will also consider other factors, such as degree of ownership overlap, geographic diversity, appraisal complexity, tribal interest and capacity, and cost and time efficiency.

Tribal leadership and involvement are crucial to the success of the Program. The Department hopes to enter into cooperative agreements with many tribes to implement the Program through a federal-tribal partnership, which will promote tribal sovereignty, minimize administrative costs, and improve overall Program effectiveness and efficiency. The Department has worked actively with tribes and has incorporated their valuable feedback into Program processes and policies. The Program benefits greatly from the open dialogue, questions, and interactions with tribal leaders and landowners.

Tribal leaders have overwhelmingly expressed the desire that the Department expend the Land Consolidation Fund on as many reservations as possible. Although the Land Consolidation Fund is substantial, it is unlikely to have sufficient capital to purchase all fractional interest across Indian country. The Department's Plan seeks to bridge the potential gap between the expressed desires of tribal leaders and the available funds by establishing flexible purchase ceilings to purchase interests at as many locations as possible. Flexible purchase ceilings are intended to achieve broad use of the Fund and ensure that it is not expended in only a limited number of locations. The Department will minimize administration costs (capped at 15 percent) to maximize the acres consolidated.

### III. Conclusion

The Claims Resolution Act has provided a unique opportunity for Interior and tribes, working together with substantial resources, to solve a long-standing and serious problem. The Program ultimately will strengthen tribal sovereignty by transferring lands to tribes to spur economic development and unlock the potential of tribal lands. As we move forward together, we will strive to implement the program in a fair and equitable a manner that maximizes the use of funds to consolidate tribal lands through voluntary purchases from allottees. We appreciate the Committee's interest in the Program and look forward to tailoring the implementation to meet the unique needs of each Tribal Nation.

The CHAIRWOMAN. Thank you, Deputy Assistant Secretary.

I am going to turn to my colleague. One of the reasons we are having this hearing is my colleague and I were traveling in Montana this summer, and he requested that we have this oversight hearing. So I am going to let him ask the first set of questions.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. First of all, thank you, Madam Chair. I appreciate your flexibility.

Thank you for being here, Lawrence, and for your testimony. Before I get started, I would be remiss if I didn't welcome, on the next panel, the Honorable Alvin Not Afraid, Jr., Treasurer of the Montana Wyoming Tribal Council, and the Honorable Grant Stafne, who is a Councilman of the Assiniboine and Sioux Tribes. We are very honored to have two Native American leaders and a bunch more in the audience who are here today.

Mr. Roberts, who do you have the cooperative agreement with?

Mr. ROBERTS. The Oglala Sioux Tribe.

Senator TESTER. And they are where?

Mr. ROBERTS. South Dakota, Pine Ridge Reservation. And that reservation comprises approximately 10 percent of the fractionated lands.

Senator TESTER. How many tribes have you done consultation with?

Mr. ROBERTS. We had three consultations across the Country at five different locations in terms of the initial implementation plans. So there was a consultation in Rapid City, there was one in Seattle, there were a couple of others, at least one other location. And then we have met with approximately 30 to 40 tribes on implementing the individual—

Senator TESTER. Individually you have, or who has?

Mr. ROBERTS. The program manager, John McClanahan, has met with those tribes, and his employees.

Senator TESTER. And they have taken information during the consultation process and gotten back to those tribes?

Mr. ROBERTS. Yes, most of those conversations have been, I would say, I guess I wouldn't say consultation in that it is specific to that tribe's reservation and how we are going to implement the program, so it is not the broader consultation policy-wise. Those were done with regard to the implementation plan but they have held individual meetings to work with tribes to say, okay, what are the priorities for this reservation, where do you want us to expend dollars.

Senator TESTER. So if I were to ask you what recommendations came out of Fort Belknap, you could tell me?

Mr. ROBERTS. I couldn't tell you right here off the top of my head.

Senator TESTER. But you could tell me?

Mr. ROBERTS. I could go back. I could probably talk with staff and provide something to you, yes.

Senator TESTER. I would love to have that information. I will have my staff get hold of you on that. I don't want to put you with a bunch of work, but one of the problems that I am hearing about

is the fact that there hasn't been a lot of consultation. I know there was one in Billings, because I was at it. It was big, it was broad-based, there was a lot of folks there. And it was a good starting point. But then you have to get down and talk to the tribes. That is what is really important. You are saying you have done that.

You have an office in Billings, right, for this explicit purpose?

Mr. ROBERTS. We have a BIA office in Billings.

Senator TESTER. It was set up for the land buy-back?

Mr. ROBERTS. Yes.

Senator TESTER. About 10 folks in it?

Mr. ROBERTS. I don't know that there are 10 folks there.

Senator TESTER. But close to that?

Mr. ROBERTS. Close to that, yes.

Senator TESTER. What is their outreach plan? Do they have an outreach plan?

Mr. ROBERTS. Yes, and we could provide that to you, Senator.

Senator TESTER. Okay, good, because I am hearing from the tribes they are not doing much outreach.

Mr. ROBERTS. Okay.

Senator TESTER. Just to let you know that.

How much of the \$1.9 billion does the Department think is going to go to administration?

Mr. ROBERTS. Our goal is to spend less than what Congress identified in the legislation.

Senator TESTER. How much is that?

Mr. ROBERTS. Three hundred and eighty-five million dollars.

Senator TESTER. Okay. And you had said that the Under Secretary had said that the success of this program is going to be determined by the tribal leaders. I agree, by the way. I think that is a fair statement to make.

I just want to say, there is a real opportunity here to do some solid consultation and do some incredibly good communication. It has to be done by people that are as good as you are. And visit with these tribes and find out what is going on. And let them help you set this program up.

Now, there are certain parameters, for example, you probably know, I was in agreement with the tribe on. But as long as you communicate where the differences are, I think that is important. On the other side of the coin, I think there is information they are going to bring to the table that you need to be successful. And in the end, I can tell you I have been contacted by almost every tribe in Montana, if not, I will say almost, because I can't say for certain every one of them have contacted me, and have said, we want to be a part of this process and we want to play a big role in this process. And we think we can do it cheaper administratively.

Mr. ROBERTS. And that is music to our ears, because that is what we are looking at, is how can we implement the program as broadly as possible. So we have heard from tribes, especially those tribes that have the top 40 reservations of fractionated interests, basically saying, when are you going to get to us.

Senator TESTER. Good. Last question. I don't mean to cut you off, but I have another hearing and I am already 10 minutes late. Right now, if you were going to do an appraisal process on the Northern Cheyenne Reservation in Montana, who would do it?

Mr. ROBERTS. It would depend on the cooperative agreement. What we would do is talk with the tribe and we would see whether that was something that they would implement or wanted to implement as part of a cooperative agreement. Otherwise, it would be the Office of Special Trustee and the appraisers there.

Senator TESTER. And you are going to have a cooperative agreement with every tribe, every tribe that has fractionated land?

Mr. ROBERTS. Every tribe that may want a cooperative agreement. Some tribes may not want a cooperative agreement.

Senator TESTER. Okay. Thank you very much. I apologize to the folks who will be on the next panel. I will submit some questions.

Thank you very much, and thank you, Madam Chair.

The CHAIRWOMAN. Thank you, Senator Tester. Just to continue on this line of questioning, obviously there is an issue of time and money here, given the statute allowed for that money to be spent over a 10-year period of time, one year that has already elapsed. Do you have goals as far as that allocation of resources, even if they are just internal goals? So we don't end up in year nine actually losing the money and having it go back into the Treasury?

Mr. ROBERTS. Yes, there is a broad goal of spending a least half of the fund before 2016, or through 2016, essentially, so that we are making progress. So I think at this point we are moving forward, we have our first cooperative agreement. We are moving forward in terms of sending out offers. We hope those offers will be accepted by the end of the year.

The CHAIRWOMAN. What is the range of that settlement? The range, value-wise, of that settlement?

Mr. ROBERTS. Of which settlement?

The CHAIRWOMAN. The one you were just talking about.

Mr. ROBERTS. You mean sending out purchase offers?

The CHAIRWOMAN. Yes.

Mr. ROBERTS. With regard to Pine Ridge, I believe that we have appraised approximately 3,000 parcels, approximately 3,000 interests we have appraised. So those will be going out. What we have done is we have created an automated system where those offers will go out to all of the individuals that have interests in those fractionated parcels. The Oglala Sioux Tribe will then be conducting outreach with those individuals. They will have a certain period of time to decide whether to accept that offer. If the offer is accepted and they send that back into the Department, that money is then immediately transferred into the Individual Indian Account, and then that parcel or that interest is immediately transferred in the tribe's name. So the acquisition aspect of it is almost fully automated.

The CHAIRWOMAN. Okay. My point is, though, that is probably, what, certainly not more than several hundred million dollars, right, of wrapping up that particular phase?

Mr. ROBERTS. I think the purchase ceiling for Pine Ridge is approximately \$125 million.

The CHAIRWOMAN. Okay. So my point is, if you are saying somewhere around \$2.8 million, \$2.9 million you want to have spent by 2016, and this is the first offer, what happens if individuals aren't willing to sell? What is the process there?

Mr. ROBERTS. We will have to look at that on sort of a case by case basis. Because there may be situations where people are not willing to sell for a particular reason and we will need to work closely with tribal leadership and the community to see what those reasons are. It may be timing, it may be that those individuals don't have good information or it may be that members don't want to sell, and that is completely their choice. If they don't want to sell, then we would have to look at other tribes and other reservations where they may have more interested sellers.

The CHAIRWOMAN. And you are not expecting changes to the law, you are not asking us for any help there.

Mr. ROBERTS. Not at this point. Because the ink basically dried last year, so we have been focusing on trying to ramp up and work closely with tribes. We haven't discussed any changes to the law.

The CHAIRWOMAN. I guess why we are here today is to say we are concerned about the shortness of time, and to drill down on how much the first year is about establishing the process.

Mr. ROBERTS. Right.

The CHAIRWOMAN. And what that process really entails versus all the complexity there is to appraising, communicating.

Mr. ROBERTS. Yes.

The CHAIRWOMAN. Getting offers out, getting offers responded to, making the final purchase. The complexity of that seems to be pretty significant. So we are very concerned about the timing and the allocation.

Mr. ROBERTS. I think we will have a better sense of things as we move along this year. I think while we have announced our first cooperative agreement and we are sending offers out this year, we are close with a number of other tribes on cooperative agreements. And as we implement it, I think we are going to see where we can achieve cost savings and where we can streamline things and where there might be hiccups in the road that we hadn't anticipated.

The CHAIRWOMAN. So if we were to, if this committee was to schedule another oversight hearing, say, at the mid-point next year or late spring, May, June timeframe, you would expect that you would be telling me about five or six or seven different settlements that have occurred?

Mr. ROBERTS. I would expect at least that we would be moving forward with some of the, I would say a handful of reservations with the largest fractionation issues. So I would expect that by spring or summer of next year, we will have a better sense as to how things are unfolding and where we are headed.

The CHAIRWOMAN. Is your philosophy the largest amounts of fractionated, or how are you approaching it?

Mr. ROBERTS. We have heard from tribes through our consultations that it is important to get to as many reservations as possible. And there are 150 of those. So while we have been working with the Oglala Sioux Tribe and other tribes, we are also working with, for example, the Makah Tribe, which has a very limited number of fractionated interests. It is not within the top 40. So the top 40 tribes comprise essentially 90 percent of the fractionated interests.

So we need to focus on those top 40, but that doesn't mean that we are not going to focus on those other tribes that are not the top 40 tribes. We think there is value in trying to work with all tribes to implement the program, so it is not just the top 40 focus.

The CHAIRWOMAN. Then how do you want to look at the metrics? Because you could either do it by land or you could do it by number of tribes. But if you are saying you really want to focus on those top 40, but leave some time and energy to these other instances, you would assume that next year you would have to make a significant dent in those 40.

Mr. ROBERTS. I think a key metric is putting out offers. I think that is a key metric to seeing how we are moving in terms of success, how many cooperative agreements we have had and how many offers we have put out there to individuals. I think that will sort of track to see how we are progressing. That will give some input back to us in terms of if those offers aren't being accepted, why is that.

And it may be, we have heard through tribal consultations that there have been some individuals who have said, and I certainly don't blame them for this, but they have basically said I will never sell my individual interest. This is the only tie that I have to my grandmother or my father or my great grandmother, and I don't care how much money you give to me, I am not getting rid of that interest. That is completely respectable. But if that is the case in terms of when we go to a different reservation in terms of why that community isn't selling, then we know that we are not going to be able to accomplish results there, and we will have to move to other reservations.

The CHAIRWOMAN. And again, I think what we are trying to get at here today is the complexity of this challenge and not to uncover what are those challenges to that complexity. So that again, we spend another year and have not moved significantly on that list of 40, or the ancillary list, and thereby run out of time and have money reverted back.

Again, I think what we should do is make sure that the agency is establishing some metrics, because I think part of our job as an oversight entity is to understand what metrics you are using, to make sure we are accomplishing this task. So you have put a couple of interesting ideas on the table today, the 2016 number and spending half of the resources by then.

But we will want to definitely assess and cover your measurements that you are establishing, so we can have a more transparent process about this.

And to my colleague's point about the communication and cooperation, I don't know on this particular settlement if it was a major factor, but I am sure we are going to hear from the next panel that that is a key element when you are dealing with hundreds of individuals, thousands of individuals. Obviously the communication with the tribe itself, is that not a key component?

Mr. ROBERTS. It is absolutely a key component. Part of these cooperative agreements that we are working on, the reason that it takes some time is that we are not using a cookie cutter approach. We know that one size does not fit within Indian Country, one size does not fit all. There will be broad parameters and there will be

some things that are relatively standard in each cooperative agreement. But there are other things where a tribe may want to do not only outreach, but maybe they want to go into the appraisals and maybe they have the capability to do the appraisals cheaper than we can.

So we need to tailor the cooperative agreements to each tribe as well.

The CHAIRWOMAN. So you mean the distinction is not just about getting the tribe to help in the communication to members, it is in the actual—

Mr. ROBERTS. It may be broader than that.

The CHAIRWOMAN. Why can't it be more cookie cutter? Why can't you say, this is what is working, and encourage other tribes to do it, and then give prioritization to those tribes that are actually ready and able to help you? Because those are the fastest agreements that you are going to get done.

Mr. ROBERTS. Well, we want to work with all of the tribal communities where there is the issue. Some tribes may not want to implement the program at all. They may want to say, Department of Interior, you go ahead and run it, it is not our job, Congress gave it to you.

The CHAIRWOMAN. But in that instance, why would you bother sending out the appraiser at that point in time? Why wouldn't you go say, okay, let's go send appraisers on these programs where tribes have already agreed people are anxious to be cooperative? You still might run into individuals who don't want to settle. But you are going to come a lot farther along in the process.

Mr. ROBERTS. I don't disagree.

The CHAIRWOMAN. And then leave the tough, thorny things, or the ones where you are driving 100 percent, leave those to a later point in time.

Mr. ROBERTS. We may do that. But there are issues, I guess, with, let's say there is a tribe within the top five. Let's say, for example, it was a tribe within the top five that comprised, let's just make something up, like 10 percent of the problem. And they were basically saying, Interior, we want you to implement the program. I don't know whether putting off 10 percent of the issue later on down the road, we may never get to that.

So I think what we have heard in our consultations and individual meetings with tribes is somewhere along the lines of what the committee has heard, which is tribes are enthusiastic about the program.

The CHAIRWOMAN. I am sorry, they are or are not?

Mr. ROBERTS. They are enthusiastic about the program. And tribes are basically saying to the Department, let's move more quickly let's move fast, we think that this is a great program. And what we have done is we have basically said, great, along the lines of what you said, Chairwoman, in terms of let's identify those tribes that are most enthusiastic. We have sent out a notice in the Federal Register asking for tribes to send in either a letter of interest or a cooperative agreement to signify that they want to be affirmatively within the program. So that is one of the ways that we are moving forward as well.



The CHAIRWOMAN. It just seems to me that that is a key indicator, that relationship. It seems to me what we will hear from the next panel, we will see what their thoughts are on that, that that is because people have created a, whatever you want to call it, a global picture of what they are trying to achieve economically, that the tribe has. So they are willing, maybe in certain instances, to have a specific mission that might be tied to their location, growth pressures, opportunities, resource management, resource acquisition. Things that are, again, a well-established vision.

And those areas where there isn't that vision, I would just imagine that you are also going to find lower down in the individual ranks probably less information and certainty as well. I would suspect you would run into a lot of uncertainty about whether to sell or not to sell.

I see you are saying, this is a big holding and we want to get rid of it. To me, giving priority to those things that we can move quickly. So we definitely will have another oversight hearing in a year and check in on this. We are almost in this compounded, compounded, compounded situation where the original policy on termination, and then assimilation, compounded by then the process of mismanagement of trust resources, compounded by the *Cobell* settlement, then compounded by opening, now you actually have to get it implemented.

So it is not as if just we are implementing the *Cobell* settlement. We are trying to refocus years of history here onto the right track of self-governance and economic opportunity. So we just want, now that the settlement is actually here and agreed upon by even the courts, that we actually achieve it. I guess we would say that if that is the parameter, given the 2010 Act, and we fail to meet it, and somehow that money reverted back to the Treasury, it would be one more compounding of a bad situation.

So that is why the expediency and understanding of the metrics, and the oversight. So we will look forward to having you back as the implementation continues.

Mr. ROBERTS. Thank you.

The CHAIRWOMAN. Thank you.

So we will turn to our next panel of witnesses, to also comment on the oversight and implementation of the land buy-back program. We are joined today by three tribal members: the Honorable Timothy Greene, Chairman of the Makah Tribal Council, Neah Bay, Washington; the Honorable Alvin Not Afraid, Jr., Treasurer of the Montana-Wyoming Tribal Leaders Council, who was recognized by my colleague, Senator Tester, and the Honorable Grant Stafne, of the Assiniboine and Sioux Tribe of the Fort Peck Reservation from Montana.

Welcome to you all. Mr. Greene, I hear congratulations are in order for the Makah Tribe football team, on becoming the State champs in the 1B division for the second time in three years. Congratulations on that. Thank you for being here, and we will start with you.

**STATEMENT OF HON. TIMOTHY J. GREENE, CHAIRMAN,  
MAKAH TRIBAL COUNCIL**

Mr. GREENE. Madam Chairwoman, thank you. I am pleased to be here today. My name is Timothy J. Greene, I am the Chairman for the Makah Tribe. I am pleased to testify before you today on our experience with the Department of Interior and the land buy-back program.

I would like to say that fractionated land has been a high priority of many leaderships of the Makah Tribe. So it is something that even before this program came about, it is an interest that our tribe took in our lands. I can't commend our realty department enough, Dale Denny and her staff of three people that work on these issues and keep it on our plate. They have done a marvelous job of staying on top of the information and looking forward as they were tracking the *Cobell* settlement and the developments that happened through the years leading up to this program.

In 2010, when we saw that this was coming down the pike, we began a lot of work within the community. We learned of the \$1.9 billion that the Department was making available. We immediately began identifying lands within the reservation that were most highly fractionated. We did that work with not knowing where we would land at that time. We knew that we were a small tribe. We only have 7.8 percent of our lands that are allotted. So we are in pretty good shape, compared to a lot of other tribes. We have a total reservation base of 38,000 acres. So in comparison to some of the other testimony I am sure you will hear, we don't have some of the issues and problems that go on in other places. But yet this is a priority and has been a priority for our leadership for generations.

So we sent out 1,158 letters to landowners on our most fractionated allotments to inquire if they would be interested in selling their fractionated interest in the Land Buy-Back Program. The Makah Tribal Council also directed its staff to rate all the allotments they would like to see purchased by the Makah Tribe. The Tribe made special outreach efforts by meeting with our senior citizens to obtain their input on land buy-back priorities.

Tribal officials also met with the Neah Bay High School freshmen class to get their input on which allotments they would like to see purchased. Most of the consensus was to purchase land located at Tsooes, often referred to in the local community as Sacred Lands. The Makah Tribal Council met with John McClanahan during a consultation meeting in Seattle earlier this year. We found out at that meeting that the Land Buy-Back Program was going to buy back land with more than one owner. The Tribe began assembling the land information of the less-fractionated allotments ready for the Land Buy-Back Program. Then we prioritized these allotments for timber, economic development, cultural sites and highly fractionated parcels.

We sent a letter and backup documentation to Mr. McClanahan and requested to be one of the pilot reservations for the Land Buy-Back Program. At this time, we have 14 allotments appraised and ready for the Land Buy-Back Program. This week, we will be having the first Land Buy-Back Program outreach meetings held at Neah Bay on the Makah Reservation and at the Muckleshoot Res-

ervation. That is where our realty director, Dale Denny, is doing that as we speak. That is why she is not here with me today. Otherwise she would be here.

The Makah Tribe continues to prepare for more allotments to be appraised for the Land Buy-Back Program. The Makah Tribe is receiving \$2.55 million and the first 14 allotments were appraised at \$1.5 million. The Makah Tribe has prioritized 12 to 13 more allotments that we will be including for the Land Buy-Back Program.

We are very appreciative for the Department of Interior's Land Buy-Back Program. Our experience thus far with this new program is that it has been operating smoothly with little complications for us.

Thank you again for the opportunity to testify before you today. I am pleased to answer any questions that you might have.

[The prepared statement of Mr. Greene follows:]

PREPARED STATEMENT OF HON. TIMOTHY J. GREENE, CHAIRMAN, MAKAH TRIBAL COUNCIL

Madam Chairwoman and Members of the Committee, I am Timothy J. Greene, the Chairman of the Makah Tribal Council of Neah Bay, Washington. I am pleased to testify before you today on the experience of the Makah Tribe with the Interior Department's Land Buy-Back program.

The Makah Tribe learned in 2011 that the Interior Department was making \$1.9 billion in funding available for a Trust Land Consolidation Fund. The Makah Tribe immediately began identifying the most highly-fractionated land on the Makah Reservation.

The Tribe sent out 1,158 letters to landowners on our most fractionated allotments to inquire if they would be interested in selling their fractionated interest in the Land Buy-Back Program. The Makah Tribal Council also directed its staff to rate all the allotments they would like to see purchased by the Makah Tribe. The Tribe made special outreach efforts by meeting with our senior citizens to obtain their input on land buy-back priorities. Tribal officials also met with the Neah Bay High School freshmen class to get their input on which allotments they would like to see purchased. Most of the consensus was to purchase land located at Tsooes, often referred to as Sacred Lands.

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The Makah Tribe is very appreciative for the Department of Interior's Land Buy-Back Program. Our experience thus far with this new program is that it has been operating smoothly with little complications.

Thank you again for the opportunity to testify before you today. I would be pleased to answer any questions that you might have.

The CHAIRWOMAN. Thank you, Chairman Greene.

Mr. Chairman Not Afraid, Jr., thank you for being here.

**STATEMENT OF HON. ALVIN NOT AFRAID, JR., TREASURER,  
MONTANA-WYOMING TRIBAL LEADER COUNCIL**

Mr. NOT AFRAID. Thank you, Chair. I will try and be as brief as possible.

Again, the Chairman of the Crow Tribe, as well as the Chairman of the Fort Washakee Indian Reservation send their apologies for not coming to testify. They had emergencies, I believe it was family, but they send their apologies for not making it.

To begin with, tribes may never see an opportunity like this one to address the fractionated land problem, the damage done to the Tribes with the Dawes Act of 1887 that created this situation in the first place, as we are all aware. Tribes have become more professional and also competent land managers, but often lack the financial resources necessary to buy back lands lost to fee patent status and fractionated interests.

Tribes at the local level are best suited to obtain long-term solutions to these consolidated issues. But the current plan by the DOI will simply make it a take it or leave it offer and move on to the next possible purchase. This will leave the problem unsolved and leave untold numbers of places where some or all of the respective individual Indian account holders refuse to sell by accepting DOI's one-time offer in the mail.

If the settlement funds are invested at the reservation level and tribal land management capacity is increased, the result would be that jobs and economic development at the reservation where it most urgently is needed with longer term benefits for all the tribes, rather than the mere \$75 or more for each interest. For some, it is virtually nothing. As a tribe, we should not squander this opportunity. Congress should intervene and not allow the Department of Interior to spend \$1.9 billion in 10 years. The tribes' land management and acquisition capacity should instead be bolstered. Tribes could be put in a position to be making money and not just spending it by acquisition.

I didn't come before you to come up with complaints. I come before you to say that the tribes can handle this, we have solutions. Tribal land management capacities can and should be increased. Proportional shares of the settlement funds should be provided to tribes to manage the funds, and should be earning interest as soon as possible.

Tribes should be afforded the capacity to succeed in their efforts to buy their lands back, and every obstacle should be removed, whether it be by promulgating or creating policy to expedite this endeavor. Tribes should be provided access to TAMS, which is the Interior's current record software, being that if we were doing outreach we should have access to that data base. If we don't have access to that data base, how do we know the landowners, other than someone coming in and saying, hey, I got this letter in the mail, we would like to sell our land.

The burdensome and complex cooperative agreement mechanism should be replaced with something such as a 638, although we understand that the ruling does not call for a 638, the agreements can be mirrored as such to promote self-determination, to promote accountability and transparency.

In closing, why not give the tribes the money and audit the hell out of us? I seriously believe that is the avenue to take, because the tribes could do it a lot cheaper, and at the same time, the outcome we can produce. Earlier you stated we do need to create laws and so forth. I believe you are right, because how can we implement a plan when there is no bylaws, policies and so forth governing how we are going to do this.

A prime example whether on pro or con against the Obamacare, look at these initial stages, where that is going. That is an image that we can take into account for circumventing the problems that are happening with this buy-back program. It is all new. But yet the tribes know best as to facilitating, whether it is language barriers, cultural barriers, even professional barriers. Because again, it was stated before, some will not sell their land. We understand that.

But I guarantee you that with a government to Government relationship, things would run a lot smoother. Sure, you can't have the whole pie and eat it. We understand that. But work with us. Consultation has happened. At the same time, the feedback was not really the feedback that we were looking for, such as why not give us this, why not give us that. The Crow Tribe does have a purchasing program. Fort Belknap Tribe has a purchasing program. Fort Peck also has a purchasing program which tribes utilize their own resources to purchase those lands.

Yet along the confines of the CFR and various bylaws, we plan to revert those to trust. Yet we are just kind of looked at as a red-headed stepchild.

So again in closing, I would like to thank you for this opportunity to provide this statement on behalf of the Montana-Wyoming Tribal leaders. Thank you.

[The prepared statement of the Montana-Wyoming Tribal Leaders Council follows:]

#### PREPARED STATEMENT OF MONTANA-WYOMING TRIBAL LEADERS COUNCIL

Good afternoon. My name is Ivan Posey, and I currently serve as the Chairman of the Montana-Wyoming Tribal Leaders Council, an organization representing the Indian Tribes located within the Bureau of Indian Affairs (BIA) Rocky Mountain Region of Montana and Wyoming. I want thank you for holding a hearing on this very important subject.

As you are aware, the Tribes of the Rocky Mountain Region are large land-based Tribes who have unique situations and priorities. Our Tribes carry broad responsibilities over vast Reservations in rural areas, often hundreds of miles from major metropolitan areas.

Today we have opportunity to help tribes to become more self-reliant and to promote economic development and increase land ownership for tribes in Indian Country, and to curb a small amount of the devastation caused by the Allotment Era. The Land Buy-Back Program can be and should be that vehicle, especially if Tribes are given the opportunity to administer their own programs. However, if the DOI and BIA is allowed to administer this program as it now intends to, we fear this program may become another "hurry-up, hire, spend, and vanish in ten years" program and will result in wasteful spending instead of wisely investing it and making it grow into a long term and sustainable program.

One of our member Tribes, the Fort Belknap Indian Community has provided this Committee a brief outline, with a budget, of how the Buy-Back Program can be administered efficiently and effectively at the local level, while promoting Tribal Self-Determination and fulfilling the Trust Responsibility to Tribes and individual Indians. Under this scenario, the Program will not disappear in ten years. Instead we will have a perpetual Program, which will provide us with a process which will, help us enhance Self-Determination. What we propose is simple: Tribes should be al-

lowed to develop and administer their own Programs unique to the circumstances and conditions of each individual Reservation. Administrative costs should be passed on to Tribes or left available for land purchase.

Tribal Leaders from our member Tribes have provided information at numerous sessions and meetings including those called by the Department of Interior (DOI) beginning in July 15th, 2011, in Billings, Montana and the concluding session in Seattle, WA on April 13th, 2013. Our leaders have consistently expressed the desire of our Tribes to administer their own Buy-Back Programs. All of the Tribes have reiterated that they have been utilizing their own Land Acquisition Programs for several decades and have expanded their respective land base by thousands of acres during this same period. In the time that has passed since 2011, Tribes could have completed many purchases but have been hindered by lack of funds. The process of allowing tribes to administer their own buy back programs makes complete sense since many have access to local appraisers and know the people from our communities.

The Department of the Interior, since its appointment to administer the Buy-Back Program, has totally disregarded the wishes of our Tribes. Year after year, in program after program, the DOI and BIA continue to address the tribes with paternalistic attitudes, and the current approach to administering the Buy-Back Program is no different. Tribes are thwarted in their efforts towards self-sufficiency.

The Department of the Interior has decided that it will keep the entire amount of money set aside for administrative costs. However, it has provided no information as to why the entire set aside is needed. There is no transparency or accountability to Tribes on how this money is being spent and no overall budget has ever been provided to the Tribes as primary stakeholders in the Buy Back Program. If the Tribes were provided the settlement funds, we would be rightfully be required to prove we were using and spending the funds appropriately. We believe that if Tribes are allowed to run Buy-Back Programs themselves, money can be saved, and ultimately used for additional land purchases, rather than administration.

In the mid-seventies, Tribes began to contract the education department functions from the BIA. Prior to that the BIA was satisfied with sending tribal members to boarding schools and a limited number of members on to a two or four year colleges. Since the tribes began to contract this particular program, more students are enrolled in colleges and universities and many tribes have two or four year colleges on their reservations including the Aaniih Nakoda College at Ft. Belknap, Salish Kootenai College at Flathead, Chief Dull Knife at Northern Cheyenne, Little Big Horn at Crow, Blackfeet community College, Stone Child at Rocky Boy Reservation, Wind River Tribal College on the Wind River Reservation, and Fort Peck Community College.

Tribal success in administering former federal programs is now widely known. Some of our Tribes have exercised their rights to Self-Governance under the Self-Determination Act. Others are operating a wealth of programs on their own Reservations that were formerly operated by the BIA. Overall, Tribes have demonstrated that 638-contracting under the Self-Determination Act, ensures that services are provided to Indian beneficiaries in a manner that is specific to each Reservation's needs and conditions. Decisions are made locally. In addition, more administrative costs are spent locally, hiring local people to carry out these important functions.

Now is the time that Tribes should be given the opportunity to manage this Program like they have with education and other programs under the Self-Determination Act. In ten years they will have a prosperous and functional Land Acquisition Programs that will last.

I would be also like to add that the efforts of Elouise Cobell remains in the forefront of this issue and I would like to take a moment to recognize her efforts in bringing these important matters to the attention of the Federal Government. The courts have ruled that there was mismanagement of trust assets and the government has an obligation, through treaties and executive orders, to correct these wrongs. I ask the committee to please hear our concerns and address them for the betterment of all Indian Country.

Thank you for your time and consideration. I'm happy to answer any of your questions.

The CHAIRWOMAN. Thank you. You certainly are your name, sir. Thank you for your testimony.

Councilman Stafne?

**STATEMENT OF HON. GRANT STAFNE, COUNCILMAN,  
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK  
RESERVATION**

Mr. STAFNE. Good afternoon. I want to thank Chairwoman Cantwell and the Committee for holding today's hearing. Working with this committee and the interior Department, Indian tribes are committed to ensuring that the \$1.9 billion allocated to the trust land consolidation fund is wisely and fully expended in the land buy-back program.

I have learned more in these last few minutes than I have since the inception of the buy-back program. I would like to know where our cooperative agreement is. We handed this in on August 20th.

My name is Grant Stafne. As stated earlier, I am a member of the Fort Peck Tribal Executive Board. Over the past 20 years, I have worked in virtually every aspect of Indian land acquisition for the BIA, specializing in real estate acquisition and disposal and management. This year, I followed the path of my parents, the late June Shields Stafne and my father, A.T. Stafne, who is the current chairman of our tribes, and also my uncle, Caleb Shields, whom many of you know, and was elected to the tribal council.

When I left Federal service, I was a deputy superintendent of trust services at Fort Peck Agency. I then became my tribe's director of the land buy-back program. In a little over a year, the Fort Peck Tribes purchased or acquired over 10,000 acres of fee land, which is non-Indian land, using tribal funds. I want to point out that even though the land we reacquired was taken from our tribes under the Homestead laws, for little or no compensation, when we bought the land back we paid the non-Indian sellers fair market value.

Interior's land buy-back program has the potential to reduce the devastating loss of Indian lands that began over 125 years ago when Congress enacted the Allotment Acts in 1887. In its 35 years of existence, the Allotment Act robbed Indian Country of over 90 million acres of Indian land, Indian-owned lands, and made reservations such as ours checkerboarded with tribal land, allotted land as well as fee land.

In implementing the land buy-back program, the Interior Department has already made unilateral and troubling decisions without consulting Indian tribes. The program is off to a bad start. The Department must not put its interests first and the interests of Indians and tribes second. That would be too reminiscent of Federal Indian policies of the past, policies that resulted in eradication of the American bison and indigenous languages, the removal of Indian children and the taking of Indian lands, all policies to deal with the Indian problem.

I encourage this Committee and Congress to learn the lessons of the past. The buy-back program should not be defined by what is easiest for the Federal trustee to administer, it should be about correcting a great injustice done to Indian tribes and honoring the Nation's trust responsibility to Indian tribes in the 21st century.

Our recommendations for the Department's land buy-back program are simple. First, the Department must engage in meaningful consultation with tribal governments and individual Indians on every affected reservation. Now in order for tribal consultation to

be meaningful, it must respect tribal priorities of purchasable lands. But it must also include a clear implementation schedule, purchase ceiling amounts, mineral valuations and the appraisal processes.

Interior published a draft scope of work which appears to invite tribal participation. But the Department has rejected the view that the Indian Self-Determination Act, the Act's model 638 contract and well-established and familiar implementing regulations apply to the land buy-back program. This is nonsense. Use of this simple contract or a variation of the 638 contract for the buy-back program will promote efficiency and expediency, because Indian tribes are comfortable and familiar with it.

Meaningful tribal consultation should also inform reservation mapping and land research. Interior must provide tribes a written implementation schedule under the scope alert. We recommend that Interior begin implementing the program on the most highly fractionated reservations. The Department should also work out mutually acceptable implementation plans with tribal governments within 90 days and be held to such timeframes, the same time-frame as under the Self-Determination Act.

Interior must also be transparent and provide tribes and this committee with quarterly statements of agency expenditures of program funds, including administrative funds set aside by the Department, so that tribes and the committee are assured that the vast majority of funds are expended on land buy-backs. The Department arbitrarily determined that appraisals have a nine month shelf life, rather than five months. This does not serve Indian tribes or Indian landowners.

The Department has also delegated two appraisers the discretion to determine which reservation lands are purchasable and which are not. This is a decision best left to the tribal governments. The Federal Trustee, not an appraiser for hire, should solicit tribal views first. Our views on buy-back priorities should prevail.

The Department has also made arbitrary decisions we find to be fundamentally unfair to Indian landowners. This includes denying landowners the right to appeal appraisal values, excluding real estate improvements and valuation, prohibiting landowners from reserving mineral interests and engaging in reservation-wide appraisals prior to determining landowner interests. These unilateral decisions undermine the program and should be reconsidered.

Second, whether through requiring the Department to modify the settlement agreement or through legislation, Congress must ensure that the land buy-back program fulfills its mission, achieving substantial land consolidation to allow the tribes the ability to better manage our lands and to bring a small measure of redress to the loss of 90 million acres of Indian lands. Under the Fort Peck Allotment Act, roughly two-thirds of our original 2.1 million acres were allotted or opened for homesteading. Now over half of our reservation is held in fee simple status, mostly by non-Indians. It is inconceivable that true land consolidation can occur on a reservation like ours without the ability to purchase all interests on a reservation, fee or fractionated. For the buy-back program would be more than a vehicle to close individual Indian money accounts, IM accounts, Congress must act now to correct this oversight.



Third, Interior has made the process of entering into cooperative agreements complex, resulting in delays. There must be a baseline parameter in every scope of work, with simplified forms. There is no need for tribes to submit standardized agency forms which are mostly irrelevant to implementation of a buy-back program.

In conclusion, it is time to end Federal paternalism once and for all. Indian tribes were once fully independent and self-sufficient. We can be again. We are working hard to overcome two centuries of mostly harmful and destructive Federal policies which fractionated our land and tore the fabric of our tribal communities. The Trust Land Consolidation Fund represents opportunity and promise to reverse decades of misdirection and mistreatment. The Interior Department must operate the program in partnership with tribes, consistent with its obligation as our trustee to best realize and achieve the program's important goals.

[The prepared statement of Mr. Stafne follows:]

PREPARED STATEMENT OF HON. GRANT STAFNE, COUNCILMAN, ASSINIBOINE AND  
SIOUX TRIBES OF THE FORT PECK RESERVATION

Good afternoon. I would like to thank Chairwoman Cantwell and the Committee for holding this hearing. You have before you the ability to ensure that the \$1.4 Billion allocated to the Trust Land Consolidation Fund is spent for the benefit of Indians and their Tribes. On behalf of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation, I thank you for your interest in this important subject.

My name is Grant Stafne. I am a member of the Fort Peck Tribal Executive Board, the governing body of our Tribes. Over the past 20 years I have worked in virtually every aspect of Indian land acquisition, primarily in local and regional real estate positions with the Bureau of Indian Affairs.

After graduating from Wolf Point High School and Haskell Indian Junior College, now Haskell Indian Nations University, I began a 20-year career with the Bureau of Indian Affairs specializing in real estate acquisition, disposal, and management. I began my career as a Realty Clerk in Acquisition & Disposal (A&D) at the Fort Peck Agency. I was promoted to Realty Specialist in A&D first at the Fort Belknap Agency, and later the Rocky Mountain and Eastern Regional Offices in Billings, Montana, and Nashville, Tennessee. When I left from federal service I was the Deputy Superintendent of Trust Services at the Fort Peck Agency. Following federal service, I went to work for my Tribes as the Director of the Fort Peck Land Buy-Back program. In a little over a year that I served as the Tribal Land Buy-Back Director, our Tribes re-acquired over 10,000 acres of land on our Reservation using Tribal funds. Incidentally, even though that land was taken from the Tribes and granted to non-Indians under the Homesteading laws for little or no compensation, we paid the sellers fair market value to reacquire it.

This year I followed in the path of my parents, June and A.T. Stafne, and my uncle Caleb Shields, and ran for election to the Tribal Executive Board.

Interior's Land Buy-Back Program, using Trust Land Consolidation funding, has the potential to reduce the devastating loss of Indian lands that has persisted since this Congress first began enacting Allotment Acts in 1887. Sadly, in its 35-year existence, Allotment resulted in the loss of 90 million acres of Indian owned lands. There is no doubt that a program to restore tribal land bases and improve federal management of trust resources is beneficial and long overdue.

However, because the Buy-Back Program was developed by the Department of the Interior unilaterally, and without any Tribal involvement whatsoever, it has been designed to benefit the government first, and Indian beneficiaries second. That very notion is reminiscent of the federal Indian policies of yesterday: policies that resulted in the eradication of the American bison, the removal of Indian children, and the taking of Indian lands; policies that were intended to benefit the government in dealing with "the Indian problem."

Almost 40 years ago, Congress declared that the new federal Indian policy would be one of Self-Determination, as President Nixon called it, "a new era in which the Indian future is determined by Indian acts and Indian decisions." In order to comply with Congressionally-mandated policy, the Department should, at the very least, engage in meaningful consultation with Tribes and individual Indians on every affected Reservation. That consultation must necessarily pertain to the implementa-

tion schedule, purchase ceiling amounts, mineral valuations, and the appraisal processes for each Reservation.

Unless Congress acts now to require meaningful consultation, it appears that the Interior Department intends to use the Buy-Back Program as nothing more than a vehicle for closure of Individual Indian Money Accounts. Surely Congress intended more when it appropriated nearly two billion dollars to the Land Consolidation Fund; surely Congress intended the Program to achieve substantial Tribal land consolidation in order to bring a small measure of redress for the loss of 90 million acres of Indian lands.

Under the Fort Peck Allotment Act, roughly two-thirds of the original 2 million acres of Tribal lands were allotted or opened for Homesteading. Now, over half of our Reservation is held in fee simple status, mostly by non-Indians. It is inconceivable that true land consolidation can occur on a Reservation like ours without the ability to purchase of all interests. Congress and Interior must act now to address this oversight through modifications to the settlement agreement and corresponding legislation, if necessary.

The Department has published a draft scope of work under the Program that appears to invite Tribes to participate in the various phases of implementation such as outreach, land research, valuation, and acquisition. This suggests that despite the lack of consultation, Interior nevertheless values Tribal participation. However, the Department insists that the Self-Determination Act, the model contract set forth in the Act, and the implementing regulations do not apply to the Buy-Back Program. The rejection of the Self-Determination Act as a vehicle for implementing the Program is a reversion to a time when federal Indian policy was driven by paternalism and patronage. Instead, the model Self-Determination contract and the implementing regulations should be used as guides for contracting with Tribes under the Buy-Back Program. Both Tribes and Interior have familiarity with the Self-Determination contracting process, which would promote efficiency and expediency.

Regrettably, the process being implemented by the Department for Tribes to enter into Cooperative Agreements under the Program is unnecessarily complex and has resulted in a multitude of delays. The Department has established no baseline parameters with regard to the tasks set forth in the Scope of Work, resulting in lengthy and unfocused back-and-forth negotiations. In addition, the Department is requiring Tribes to submit SF-424s which are overly complex and largely irrelevant to implementation of a program designed by buy back lands for a Tribe.

Additionally, other tasks contained in the Department's Scope of Work, such as mapping and land research, have commenced without any Tribal participation. Moreover, the implementation schedule under the Scope of Work has not been made public. Based on the initial Implementation Plan, Tribes assumed that the Program would be implemented first at the most highly fractionated Reservations. However, Interior has developed an implementation schedule without consultation with Tribes and without a release of criteria for the schedule. For Fort Peck, Interior has only acknowledged receipt of our completed application but has provided no information on where we are on the implementation schedule. This lack of communication is alarming particularly for a Reservation like ours with significant mineral development and potential. Not only has Interior left us in the dark about the implementation schedule, they have provided us with no information on how minerals will be valued.

The Department has made numerous critical policy decisions concerning the implementation of the Buy-Back Program without Tribal input and with what appears to be a complete disregard for trust responsibility the Department is obliged to administer by law. This top-down and paternalistic management style fundamentally undermines Congress' intent in appropriating money for the Program.

For example, the Department has arbitrarily determined that appraisals used under the Program will have a 9-month shelf life. Although appraisals are normally valid for 12 months, the Department has provided no information as to why this shorter timeframe has any benefit to the Program or Indian beneficiaries. This decision limits co-owner purchases, which are authorized by federal law. Moreover, if a sale cannot be completed in 9 months, which is quite plausible in our experience, additional costs will be incurred to update the appraisal.

In addition, the Department has given appraisers discretion to determine which Reservation lands are purchasable and which are not. These decisions will apparently be made without consultation by the United States as the trustee, or by the Tribes as an ultimate beneficiary. This grant of authority outside the trustee-beneficiary relationship is an affront to Tribal sovereignty, a breach of the Trust Responsibility, and is fundamentally unfair to individual Indian landowners. Other arbitrary decisions by the Department that may result in fundamentally unfair treatment of the Indian landowners include: denying landowners the right to appeal ap-

praisal values; excluding real estate improvements in valuation methods; prohibiting landowners from reserving mineral interests; and engaging in massive, Reservation-wide appraisals prior to determining landowner interest.

Finally, the Department has closely guarded the fiscal activities of administering the program. Rather, than operating the Program transparently, the Department has refused to report on the expenditures of the administrative funds set aside under the Program. We know that the Department is spending money, even though not a single acre of land has been purchased under the Program. Without any knowledge of how much money has been spent, how can we be assured that there will be enough money to administer the Program throughout its life? We do know that the Department has determined that Indirect Costs will be capped at 15 percent for Tribes that enter into cooperative agreements, even though Tribes have negotiated indirect cost rates for all federal funding. We can only hope that the government is as concerned about its own spending as it is with ours.

I will conclude by saying that while Congress struggles to reach agreement on how to fund our government, Indian Country is disproportionately affected. Conditions in Indian Country remain among the worst in the country. Indians continue to rank at the bottom of every social and economic indicator: unemployment, income, infant mortality, life expectancy, chemical dependency, suicide. . . .

It should not be forgotten that these conditions are a direct result of federal policies over the last two centuries; policies that promoted paternalistic treatment of Indians and a system of political patronage. One of those policies resulted in the loss of 90 million acres of Indian held lands. The Buy-Back Program cannot give full redress for that loss or its effects, but the Trust Land Consolidation Fund does have the potential to fulfill that to which its name aspires.

I urge the Committee to demand meaningful consultation by the Department with Tribes and Indian beneficiaries and require the Department to execute the Self-Determination laws and policies prescribed by Congress.

Thank you for the opportunity to share our perspectives and concerns. I would be happy to answer your questions.

The CHAIRWOMAN. I want to thank all of the witnesses for their testimony and start with some questions.

But one just generally first, so we can get some idea for the record, in general, why is this so important to your tribe as it relates to what you are trying to achieve? What is the challenge economically without being able to have the settlement and reclaim some of this land? What is your vision or strategy for that? Any of your interests that you represent.

Mr. STAFNE. The interest I represent is 2.1 million acres of our reservation is held by non-Indians. We would like the settlement to be opened up to purchase any land available within the exterior boundaries of our reservation, whether it be fee land or trust land. We would like the opportunity to buy our reservation back.

The CHAIRWOMAN. And what percentage of your reservation does that represent, the 2.1 million acres?

Mr. STAFNE. It is 954 thousand that is held in trust right now. Roughly two-thirds of that is allotted and a third of that is tribal land. The remainder of it is fee land.

The CHAIRWOMAN. Okay. Anything else from you, Mr. Chairman?

Mr. NOT AFRAID. Thank you, Chair. You asked, if the tribe isn't involved, just to clarify the question. The question is that we as the tribe suffer if we are not involved? Or the repercussions?

The CHAIRWOMAN. On one hand, the complexity of implementing this, but I am also trying to get people to understand for the record the importance of achieving it. You can certainly talk about failed policies of the past and why this program needs to be established. But my sense is there is also a very important economic interest at stake here, or a hope and economic interest that is moving toward more self-governance and self-determination and one aspect

of that is obviously getting the land back and being able to move forward on an economic outlook and agenda.

Mr. NOT AFRAID. You are right, Chairwoman. You just drove the dagger home. What happened here, I can speak specifically of the Crow Reservation, within the Crow Reservation in the past, of mis-handling or mis-use or what have you. Again, the intricate details per reservation are abundant. You have not only cultural impacts, you have social impacts. You have behavioral impacts. Again, without the tribe being the forefront, we are coming into a situation where the Government is going to see what is fit, the Government is going to say, this is what is best for you.

That deters social improvement. That also deters economic development. And we as tribes, if you sat in our chairs and were governed, we are the most governed citizens of the United States. An example, going on a tangent here, but just to give you an example, look on the Crow Reservation, a law governing that you cannot consume alcohol. I was in the military and going overseas, fighting, being in the Marine Corps in the 1990s, you should be entitled to certain things, such as alcohol, if you choose. I am not a proponent of alcohol, but the point I am trying to make is laws within the reservations are different than laws off reservation.

Now, is that a right? Off reservation, if the U.S. Government said, no more alcohol, what happens? So the point I am trying to make is, we are being governed at the same time by laws that don't fit best for our people. And when rules are promulgated and made at the upper echelon, by the time it trickles down to each local agency, it doesn't fit the bill. And yet we see so much inconsistency, such as treaties being violated.

I don't want to go there and play the victim. I am a big boy, I say hey, let's work together, what can we do? So the thing is, if treaties are being violated, Congressional acts are being violated that were geared toward the Crow Tribe, where do we stand? Because again, this implementation of this land buy-back through consultation, there were times when the Indian Land Consolidation Act was represented by the Office, but yet, oh, no, we aren't going to use that, oh, no, we can't use that.

Example, competent land on the Crow Indian Reservation. That is where lands held in trust are considered competent with five or less owners. Those owners have the right to negotiate and engage in any type of lease on their own behalf without the bill's approval. It is filed at the Bureau of Indian Affairs. But if they choose to lease their land out at \$2 an acre, below the Government's threshold of \$2.50, that is their prerogative.

Where I am going with this is, if they buy an interest, those landowners then have no right, because of the Office lease statutes.

The CHAIRWOMAN. Let me get Chairman Greene in here. You obviously have had a more proactive approach that seemed to work well. Is that because it was a smaller amount and it was easier? Or do you think the level of dialogue you had in the community worked?

Mr. GREENE. I think, Madam Chairwoman, the smaller amount definitely does help. I would like to thank my fellow tribal leaders for their comments also, and thank you for the congratulations that you send to our football team. I will be sure to carry that back.

The smaller land base, the smaller amount of fractionation that we have in our community does help. The fact that our leadership, through generations of councils, have made this a priority and have kept up on the information I think also helped put us in the position we are here today. And definitely the hard work of the staff that I had mentioned.

I think to answer your question that you asked earlier, in general, why does this need to happen, I think what is important, at least from Makah's perspective, is that this land is usable. What that means is different for each tribe, whether it is usable for economic development, whether it is usable to protect the environment, whether it is usable to protect cultural sites, both usable and manageable. Because the way that these lands sit right now, with the high fractionation of these allotments, it is not usable and it is not manageable. So I think that is, in general, the overarching goal that I think tribes would like to get to, Madam Chair.

Thank you.

The CHAIRWOMAN. And you mentioned this dialogue that you had with the community in surveying. Did you have any challenging areas that you had identified that you could work within the program, but you had landowners just refusing to sell?

Mr. GREENE. We do run into that also. There are landowners that for reasons mentioned, whether it is their only connection to their great grandmother or great grandfather, whoever it may be, we run into those same issues. We do also have a lot of non-tribal members that own land on our reservation lands that are difficult to find and track, and to find those people and those contacts. That has been a challenge and a burden. It takes a lot of resources, a lot of hard work to try to keep up with some of that information.

The CHAIRWOMAN. My question is, do you think you have been successful because some of those tribal members realize there is a larger goal at hand and that is persuasive? So all of this communication, all this tribal vision, all of that plays an important role in the communication?

Mr. GREENE. For Makah, absolutely. I think that definitely plays a role. It is something that the community has been aware of and through the different leaderships, the message has been brought out to try to fix those issues.

I think there is a general belief in the community and a broader vision that these lands are usable and manageable and that the public can enjoy them and get benefit from them.

The CHAIRWOMAN. Councilman Stafne, how long do you think it would take Fort Peck to spend the \$80 million just in purchasing fractional interests on your reservation?

Mr. STAFNE. Madam Chair, that depends on the appraisals and if OST or their office is willing to give us appraisals right away. We are ready, willing and able to do this as soon as possible.

I also want to point out that it was stated earlier by their Department, that buy-backs, they are still purchasing, whether it be undivided trust interests or undivided fee interests or total fee interests, they stated that they were going to reimburse us for the tracts of land that we already purchased. And now it comes to find out that they are not going to reimburse us until the cooperative agreement is approved. Why don't they approve it, then? We have

been waiting on this since August. We would really like to have a response.

The CHAIRWOMAN. Something tells me you will get one after today.

Mr. STAFNE. I thank you.

The CHAIRWOMAN. The things that you outlined, many of the things, I should say, that you outlined, the issue of transparency, the 90 days of updates, the funds spent, just basic information so that people can track it I think is important. I think those are fair things. I think the issues you mentioned about the appraisal process, in and of itself, those are challenging and sticky issues that I have no idea what the formal response of the agency is. But it makes it, we should have clarity on this. Obviously not every piece of land is the same, and some obviously do have mineral rights to them and value. So we should have some clarification on that part.

I am certain the agency probably did look at 638 and decided against it. I guess the agency now has to show that they can make this successfully work or else you will have people calling for a different process to go through this.

I am curious, so when you entered your communication agreement with the agency, you said it was finalized or presented in August. How long had you been dialoguing with the agency?

Mr. STAFNE. Through working with our attorney, it was her prodding that finally found out that we were the first one in the Nation to hand in a completed contract for agreement. Now it is my understanding that there are eight. And it has recently been told that there is actually an approved one.

I find it highly ironic that they approved one right before we came and testified before you.

Also, the 15 percent administrative fees that they are withholding, that is pretty much, giving 15 percent to someone that created the problem in the first place, give it to the tribes so we can buy our land back.

The CHAIRWOMAN. Thank you. Mr. Chairman Not Afraid?

Mr. NOT AFRAID. Just to add on that last statement, the tribes, upon implementation of the current systems, such as we talked about OST appraisals, the Crow Tribe is currently, with its own enrolled members, running our appraisal program, which is a 638 from OST. So to streamline a lot of things, we are equipped in a lot of aspects, going down to the MOA, we are currently waiting, we did submit one. I have a time line here. I should know it off the top of my head.

As of July, the land buy-back kickoff in January, there were initial meetings, question and answer session. There was an assessment, development plan and outreach, implement survey in January of 2013. January to June, we had pre-offer outreach. April to June, field technicians available for land appraisals. July to September, identified notaries and provided outreach activities. July to September, post-offer outreach. September 15th to September 30th, provided outreach activities, assessed offer master list.

And then we had possible second waive offers, those were to be discussed. And our chairman has recently submitted a letter to Mr. McClanahan dated December 9th, which was just recent. That was in regard to our memorandum of agreement, and we included a

budget with that to administer. Again, we can maximize the dollar. As the Bureau itself knows, we can do more with less money. So the tribe is taking that approach with this budget, do more with less money in the aspect of administering.

The CHAIRWOMAN. Well, it seems, I am definitely going to have to consult with the Vice Chairman on this, on how we continue to communicate our interest in seeing more metrics and more measurements of the program. We will certainly have a follow-up hearing on this subject.

It seems that Chairman Greene, working without asking permission, he started consolidating that information of his tribe and then presented that, juxtaposed as some of the, let's get a formal communication. It is almost, I don't want to overstate, if I am getting it wrong, please correct me, but it seemed like you did that and then said, okay, now we want to get an agreement with you, but you already had these things done.

I am not saying that whatever that is, maybe that argues more for 638, if nothing else. Because here is somebody that got their act together and did it on their own and then presented, almost packaged with a bow on it, here you go, now let's have a formal agreement and here is what we want. Again, the acreage may have been a smaller amount, so it was easier to do. Then the consultation went easier.

But clearly, we are hearing loud and clear that tribal communities are very concerned about the slow implementation of the buy-back program and that we have to have more oversight and more metrics and more implementation. We will be monitoring this very, very closely.

Your testimony has been very helpful. There is a lot here to follow up on with the agency. We will hold the record open for two weeks in case my colleagues, if anybody else wants to submit information for the record or has questions of you, so that we can have that. We will certainly be asking the agency for more information as well.

But again, thank you for being here and for the representation you are providing for your various tribal entities. We appreciate the leadership.

We are adjourned.

[Whereupon, at 3:38 p.m., the Committee was adjourned.]





# A P P E N D I X

## PREPARED STATEMENT OF THE COALITION OF LARGE TRIBES

### Introduction

The Coalition of Large Tribes (COLT) appreciates the Senate Committee on Indian Affairs' oversight of the Department of the Interior's implementation of the Land Buy-Back Program for Tribal Nations. COLT members will be among the most affected by the Program. Nearly all of our members have already been identified by Interior as having reservations with the most fractionated lands. In addition, COLT members make up seven of the top ten tribes with the most fractionated lands.

COLT is concerned that recent Interior decisions in implementing the Program will ultimately diminish the success of the Program. Interior should follow the direction of the *Cobell v. Salazar* Settlement Agreement and the Claims Resolution Act of 2010, P.L. No. 111-216, approving the Settlement, and work with tribes as partners to implement the Program.

While the *Cobell v. Salazar* litigation concerned individual Indian interests, COLT members and a number of other tribes have significant interests in the success of the Land Buy-Back Program for Tribal Nations. The interests in lands purchased through the Program will be returned to tribal status and held in trust for the benefit of the tribes. In addition to other concerns, we need to ensure that the lands purchased will provide maximize benefits to the tribes.

As Interior takes its first steps to implement this \$1.9 billion program, COLT asks that the Committee take a close look at Interior's plan. COLT is particularly concerned with the process Interior proposes for entering into Cooperative Agreements with tribal governments to assist in the implementation of the Program. The Land Buy-Back Program for Tribal Nations is one of the largest Indian programs the Federal Government will undertake and it deserves close scrutiny by the Committee.

### Large Land Base Tribes Have a Substantial Interest in the Program

COLT was established in April 2011 to provide a unified advocacy base for tribes that govern large trust land bases and provide full service in the governing of their members and reservations. As a part of its mission, COLT closely monitored Interior's development of the Land Buy-Back Program for Tribal Nations. COLT members participated in tribal consultation sessions and filed comments during the development of the Program. COLT also worked closely with Interior in the development of a Cooperative Agreement template for tribes to assist in the implementation of the Program.

As you know, the Program is the result of the settlement of the long-running *Cobell v. Salazar* litigation regarding the Federal Government's mismanagement of Indian trust lands and resources. On December 7, 2009, the parties to that litigation entered into a Settlement Agreement which included a \$1.9 billion Trust Land Consolidation Fund. The Settlement Agreement was approved by Congress as a part of the Claims Resolution Act of 2010, P.L. No. 111-291, and ultimately finalized by the courts following the exhaustion of appeals to the U.S. Supreme Court on November 24, 2012. The Fund must be used within 10 years, by November 24, 2022.

The \$1.9 billion Trust Land Consolidation Fund will be implemented through Interior's Land Buy-Back Program for Tribal Nations. The subject of today's hearing. The Program will use the \$1.9 billion in funding to purchase individual Indian fractionated interests in allotted lands, as well as to administer the Program and make payments into a scholarship fund intended to incentivize the sale of individual fractionated interests. Once purchased, the fractionated interests will be returned to tribal status and held in trust for the tribe on whose reservation the purchase was made.

Thus, while the *Cobell v. Salazar* litigation and much of the Settlement Agreement concern mismanagement of individual Indian lands, COLT members and other tribal governments have a substantial interest in the successful implementation of the Land Buy-Back Program portion of the Settlement Agreement. First, we want to ensure that our members will be treated fairly if they choose to sell their lands.

And, second, the more that fractionated interests are returned to tribal status, the better tribal governments will be able to develop and manage lands for the benefit of our tribal communities.

Returning lands to tribal ownership through the Land Buy-Back Program will be a small but important step to address the long-standing effects of the Federal Government's failed allotment policies. Through the policy of allotment, beginning with the General Allotment Act of 1887 (also known as the Dawes Act), 24 Stat. 388, until 1934, when allotment was repealed, tribal land areas had decreased from 138 million acres to 48 million—a 65 percent reduction. As tribes with large land bases and a history of utilizing resources over large areas, COLT member tribes suffered the most from the Federal Government's policy of breaking up large tribal land bases.

### **Greater Tribal Involvement is Necessary for the Successful Implementation of the Program**

Interior is unnecessarily restricting tribal involvement in the implementation of the Land-Buy Back Program for Tribal Nations. While everyone agrees that tribal participation is essential to the success of the Program, Interior has made a number of decisions that limit tribal involvement and will reduce the amount of fractionated interests in lands that are acquired. Moreover, the interests that Interior does acquire may not provide maximum benefit for the tribe involved. To address these issues and help to ensure the success of the Program, COLT asks that the Committee exercise its oversight role and seek changes in how Interior is implementing the Program.

First, Interior is not fully utilizing existing tribal land consolidation offices. A number of COLT member tribes have well-established and successful land consolidation offices. These offices have long been working pursuant to the Indian Land Consolidation Act, 25 U.S.C. § § 2201 *et seq.*, (ILCA) to reduce fractionation and address the effects of allotment. To ensure that tribes receive the maximum benefit from the Land Buy-Back Program for Tribal Nations, Interior should be working in partnership with these offices.

In fact, the Settlement Agreement directs Interior to utilize these tribal land consolidation offices. Section F.1. of the Settlement Agreement requires that “the Interior Defendants shall distribute the Trust Land Consolidation Fund in accordance with the Land Consolidation Program authorized under 25 U.S.C. § § 2201 *et seq.*, any other applicable legislation enacted pursuant to this Agreement, and applicable provisions of this Agreement.” Under ILCA, Indian tribes, not the Secretary, identify and make land purchases.

Ultimately, the Claims Resolution Act also needed to provide authority for the Secretary, as a party to the litigation and Settlement Agreement, to make these land purchases. Subsection 101 (e)(4) of the Act provides that, “The Secretary may acquire, at the discretion of the Secretary and in accordance with the Land Consolidation Program, any fractional interest in trust or restricted land.” Yet, this subsection's reference to the Land Consolidation Program reinforces the roles of tribes in the purchase of lands.

The Land Consolidation Program, as defined in the Claims Resolution Act, provides a dual role for tribes and Interior in implementing the Program. Subsection 101 (a)(4) provides that the term “Land Consolidation Program” means a program conducted in accordance with the Settlement, the Indian Land Consolidation Act (25 U.S.C. 2201 *et seq.*), and subsection (e)(2) under which the Secretary may purchase fractional interests in trust or restricted land.”

Thus, both the Settlement Agreement and the Claims Resolution Act, through their reliance on ILCA, require significant tribal leadership and participation in the purchase of lands. As a result, Interior should be fully utilizing existing tribal land consolidation offices and providing a significant role for Indian tribes in the repurchase of tribal lands. Not only will these existing resources provide greater efficiency to the implementation of the Program, but the expertise of these offices will help to ensure the most beneficial lands are acquired.

Second, Interior is discouraging tribal participation in the Land Buy-Back Program through an unduly bureaucratic and cumbersome application process for Cooperative Agreements. In the absence of “638 contracts” to implement the Program, COLT actively sought the use of Cooperative Agreements and helped to negotiate an agreement template. However, in implementing these agreements Interior is discouraging tribal participation by making it difficult and burdensome to successfully apply for and complete a Cooperative Agreement. Given the need to complete the Program within 10 years and the number of tribes involved, an efficient and flexible process is needed for tribes to enter into Cooperative Agreements.

COLT asks that the Committee investigate the process Interior is using for entering into Cooperative Agreements. Rather than using common methods used by Indian tribes and the Federal government to work in partnership toward a shared goal, such as a grant or contract, Interior decided to classify Cooperative Agreements for the Program as a “financial assistance award.” These “financial assistance awards” have resulted in Interior requiring a number of inefficient steps as we all try to jointly implement the Program.

For example, Interior is applying the cumbersome federal procurement provisions of Office of Management and Budget Circular A-87 (OMB A-87). Among other things, OMB A-87 requires tribes to develop detail cost estimates from three sources for supplies needed to implement a Cooperative Agreement under the Land Buy-Back Program. As a result, instead of researching land records and contacting tribal members willing to sell their lands, tribal staff are spending their time completing a cumbersome bidding process for computers and other typical office equipment needed to implement the Program.

In another example, as a part of entering into Cooperative Agreements, Interior is requiring tribes to complete Standard Forms 424, 424A, and 424D for the receipt of financial assistance. These forms, again, require overly detailed information and ask a number of questions that appear to be irrelevant to project implementation. Instead of directing tribes into generic Federal government application processes for “financial assistance awards,” the Program should be utilizing streamlined agreement and financing processes that allow the Federal Government and tribes to partner in the implementation of the Program.

In another example, Interior is requiring tribes to advertise and select employees through a competitive application process even though everyone knows the jobs will be temporary. Appointments should be fast tracked based on the expertise needed to implement the Program quickly and efficiently.

Meanwhile, Interior is providing little guidance as tribes attempt to navigate this cumbersome and bureaucratic hiring process. For example, Interior could be providing a set number of employees that it would be willing to fund for each task under a Cooperative Agreement based on reservation size, funding, and level of fractionation. Yet, we understand that some tribes have had to exchange hiring plans with Interior more than 5 times before Interior would clearly state how many staff positions they would fund.

And, in another example, COLT understands that tribes are having difficulty finalizing Scope of Work documents for a Cooperative Agreement. Again, Interior has not provided guidance in the form of baseline parameters for the tasks set out in its Scope of Work Template. This has resulted in lengthy negotiations and exchange of documents before agreement can be reached. Moreover, because Interior is not fully utilizing tribal offices, tribes have been forced to engage in these lengthy discussions to implement only small parts of the overall Program.

In each of these areas, Interior has established numerous requirements for tribal participation, yet has provided little guidance on fulfilling these requirements. This level of inefficiency and bureaucratic governance has COLT concerned that the Land Buy-Back Program for Tribal Nations will not achieve the full potential of the \$1.9 billion available to consolidate tribal land holdings. The Program represents a significant opportunity for the Federal government and tribal governments to address some of the long-standing effects of the disastrous Federal policy of allotment. Rather than creating roadblocks, Interior must open doors to encourage tribal participation. Tribal participation is required by the Settlement Agreement and the Claims Resolution Act and is needed to ensure the success of the Program in tribal communities.

#### **Tribes Must be Protected Under the Federal Tort Claims Act During Implementing**

Cooperative Agreements between Interior and Indian tribes should provide tribal employees with coverage under the Federal Tort Claims Act. The Act provides a limited waiver of sovereign immunity allowing parties claiming to have been injured by negligent actions of employees of the Federal government to file claims against the government. The Act also provides authority for the Federal government to defend against such claims. Congress has extended authority under the Act to include tribal employees carrying out contracts, grants or cooperative agreements under a “638 contract.”

As tribes provide assistance implementing Interior’s Land Buy-Back Program for Tribal Nations, our employees should be provided this basic protection against accidents and injuries to others that may happen on the job. For example, to conduct outreach to remote parts of our reservations, tribal employees will spend many hours on often substandard BIA roads. If an employee causes an accident while car-

rying out these duties, the Federal Government should provide protection under the Act.

While COLT understands that Interior has decided that it cannot use “638 contracts” to implement the Program, general contractors to the United States have been provided with coverage under the Act. Just as any other contractor working in pursuit of Federal goals would be covered, tribal employees should also be covered.

#### **Additional Issues Likely to Affect the Success of the Program**

COLT is concerned that Interior is charging ahead without sufficiently considering the effect of a variety of issues on the success of the Program. We describe some of these additional issues below.

- Interior should be casting a wide net to certify and approve contract appraisers to speed up implementation of this key aspect of the Program.
- Appraisals conducted under the Program will expire after 9 months. Depending on how long it takes to accomplish a sale, this may result in multiple appraisals being required for the same property. Yet, current BIA practice is that an appraisal is good for up to 18 months. To ensure that resources are not wasted on multiple appraisals, the current BIA standards should be used.
- COLT seeks a fair appraisal process. Interior is proposing to use mass appraisals, but flexibility needs to be built into the mass appraisal process. For example, on reservations with oil and gas development, Interior must recognize that production levels can vary across a reservation. Fractionated interest owners should get an appraisal based on the best price for their land and not a reservation-wide average. In addition, to ensure that the appraisal and sale process is fair, Interior should also provide a streamlined appeal process to contest an appraisal or notice of sale.
- Interior must provide a higher minimum payment to promote the sale of very small fractionated interests in land. Purchasing these small fractionated interests provides the greatest benefit to the greatest number of people. Success in consolidating ownership in highly fractionated lands is also very important to making tribal lands easier to manage and develop. COLT sought a minimum payment of \$500 for the sale of a fractionated interest to ensure that these interests get sold. Interior’s decision to use \$75 as its minimum payment jeopardizes the success of the Program.
- Interior should provide individual Indians a right of first refusal to purchase fractionated interests. In some cases, an individual Indian may be in the best position to acquire fractionated interests and put land to beneficial use. In other cases, an individual may be able to save a family farm for future generations. In addition, allowing for individual Indians to purchase fractionated interests will spare some of the Program’s funding and will spread the benefits of the Program over a larger area.
- Finally, tribal participation in the Program could also be increased by allowing tribes to access the Trust Asset Account Management System (TAAMS) and other federal data bases. Limiting access to these databases will slow the Program down and jeopardize the success of the Program. Interior should open up access to TAAMS to every tribal contractor.

#### **Conclusion**

COLT asks that the Committee investigate these concerns and seek necessary changes to the Program. While the *Cobell v. Salazar* litigation only concerned individual Indian claims against the Federal Government, Indian tribes have a significant interest in the successful implementation of the Land Buy-Back Program for Tribal Nations. Tribal interests were recognized in the provisions of the Settlement Agreement and the Claims Resolution Act provided an important role for tribes in implementing the Program. Indian tribes and Interior should be working in partnership, but Interior seems to have adopted a take it or leave it approach. We ask that the Committee seek changes to this approach to help ensure the success of the Program and the maximum benefit to Indian tribes.

JOINT PREPARED STATEMENT OF HELEN SANDERS, ALLOTTEE AND JIM HARP,  
CHAIRMAN, ALLOTTEES ASSOCIATION AND AFFILIATED TRIBES, QUINUAULT  
RESERVATION

We appreciate the Senate Indian Affairs Committee conducting a nomination hearing for the Special Trustee for American Indians. We are very hopeful that this is moving in the direction of the continuation of the Office of Special Trustee (OST).

Regarding the OST, we have a statement concerning a proposal to undo the progress that has been made for the many Indian beneficiaries across Indian Country for the past twenty years.

**Proposed Indian Trust Asset Reform Act**

We oppose S. 3679.

S. 3679 is a proposal by the Affiliated Tribes of Northwest Indians (ATNI). The legislation proposes to undo a program that is working efficiently and honestly in asset management and distribution of individual and tribal trust funds. S. 3679 mandates the following three errors listed below will plunge trust asset management into the abyss where it was lodged for decades and also raises the specter of new problems.

*1. Abolition of the Office of Special Trustee*

The Office of Special Trustee (OST) was created in light of errors and mismanagement of federal trust brought to light in the case *Cobell v. Kempthorne/Norton/Babbitt/Salazar* that was ultimately resolved in a negotiated settlement for \$3.4 billion in 2009. The OST has proven that it can effectively deal with the complex accounting and distribution of assets in both individual and tribal trust accounts. S. 3679 proposes to abolish OST. This is a mistake. The OST is working and its operations have proven that the investment in its programs are well-spent.

*2. Turning Trust Fund Management over to Civil Service Employees*

The Act of 1994 which established the OST does not operate under the same requirements as the Bureau of Indian Affairs. 3679 Proposes to transfer trust fund management to civil service Employees in the BIA. Federal Civil Service personnel are employed because of their G-S level, not specifically because of their special competency to manage money and execute judicious investment strategies for the benefit of non-competent Indians. The transfer of responsibility from the OST to federal personnel without explicit requirements defining the unique talents and knowledge required for the assignment is a mistake.

*3. Setting the Stage for Contracting Out Trust Services*

S. 3679 creates a mechanism whereby the Bureau of Indian Affairs can contract out trust services to tribes while leaving part of the program with the Bureau. The nation's more than 550 tribes and Native American communities do not possess the expertise to fulfill trust responsibilities at the highest level for the beneficiaries of the trust. The prospect of contracting out trust services fractionalizes and duplicates the efforts.

S. 3679 provides for moving Individual Indian Money (IIM) accounts from the OST to tribes via the Bureau of Indian Affairs contracting or compacting with tribes for this duty. Contracting out trust services creates the real prospect of weakening trust responsibility and dramatically lessens protection for the individual Indian. The proposed proliferation of management tasks weakens rather than strengthens the program inherent in the federal trust doctrine.

Contracting out trust services leaves only a skeleton staff and reduced funding of trust services to those tribes and individuals who do not enter into contracting or compacting agreements.

**General Comments**

The United States government has legal obligations of trust responsibility both to tribes and to individual Indians. In particular, I call attention to the decision *Mitchell, et al v. United States*, 463 U.S. 206, a landmark case. The U.S. Supreme Court ruled that the federal government has a fiduciary responsibility to the individual allottee or his or her heirs by maintenance of the value of the property, including funds, over time.

S. 3679 has the potential to not only destroy a program that is working but also to cost more money. Presumably only a few number of tribes would contract or compact to take over trust services. Each tribe that does so, however, would request funding. Tribes and individuals whose funds remain with the Bureau of Indian Affairs would be served by a program with less funding.

It is essential that fiduciary trust functions be operated separately from the other program duties of the Bureau of Indian Affairs and likewise from tribal duties. S. 3679 proposes to conflate fiduciary trust and non-fiduciary trust duties at both the federal and tribal level. This legislation will undo the resolution of the prolonged and costly *Cobell* case.

If tribes want to move tribal trust funds ONLY from the OST to the BIA, we would support them, providing it is clear that Individual Indian Monies (IIM) would remain at the OST under the present management.

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PREPARED STATEMENT OF THE OGLALA SIOUX TRIBE

Introduction

The Oglala Sioux Tribe is pleased to submit testimony for this important oversight hearing about the implementation of the Department of Interior's (Interior's) Land Buy-Back Program.

The Oglala Sioux Tribe is a part of the Great Sioux Nation. Our rights, the United States' obligations to us and our unique political relationship with the United States are set forth in a series of treaties through 1868. Our Pine Ridge Reservation is massive; it encompasses over 2.7 million acres of land in the southwest corner of South Dakota. These lands are part of the lands reserved in our treaties as our permanent homes and for our absolute and undisturbed use and occupation. Unfortunately, violations of our treaties, the imposition of the Allotment policy and settlers' encroachments have damaged the integrity and benefits of our lands which we hold sacred. Implementation of the repudiated and unwise Allotment policy caused our Reservation lands to become unbelievably fractionated through the generations, and we have suffered from that policy's long-lasting negative effects. Some of our members own just a "spoonful of land." This land, however, is important to them as land is highly valued among our members and is traced back to our treaties and before.

Interior states that our Pine Ridge Reservation has over 1.2 million purchasable acres associated with fractionated tracts, over 6,000 fractionated tracts and more than 195,000 purchasable fractionated interests within the Reservation. Interior lists Pine Ridge as the most highly fractionated reservation in the nation. The magnitude of our fractionated interest problem is enormous. It hinders our economic development, planning, cultural and natural resources preservation and governance. Fractionation also hinders our members' efforts to make their lands useful.

Interior's Land Buy-Back Program presents an historic opportunity for Interior to work in partnership with tribes to mitigate some of the damage caused by the United States' failed Allotment policy. This testimony discusses our efforts to date with Interior to begin implementation of the Program on our Reservation and sets out concerns and recommendations about the Program's implementation.

Tribe's Initial Efforts with Interior Regarding Implementation of the Program

The Tribe took great interest in Interior's draft Land Buy-Back Program Plan when it was issued in January 2012, because we have had a lot of experience with the Indian Land Consolidation Act (ILCA) and other programs, including the Farm Service Agency (FSA) loans, in which we have participated in an effort to consolidate lands and stem further fractionation on our Reservation. We submitted comments on Interior's draft plan in March 2012. In those comments, we stated that tribes need assurance that they will decide what interests are purchased. Tribes are the ones that know their lands and, no doubt, should be the ones to establish which tracts are prioritized for acquisition based on economic, cultural, governance or other reasons. We also commented that tribes should be allowed to design and implement their own plans for reducing land fractionation. We encouraged Interior to use the Tribe's experience and knowledge about its lands and to rely on tribes for how best to successfully implement the Buy-Back Program on their reservations.

We urged Interior to keep implementation local, meaning that monies identified for the Great Plains reservations should remain in the Great Plains. We also asserted that Interior must find a way to pay for indirect costs. We further stated that the ILCA should be amended to allow for the application of the Indian Self-Determination and Education Assistance Act (ISDEAA) to agreements Interior enters into with tribes for tribes to carry out land consolidation and Buy-Back Program activities. The Claims Resolution Act requires that the Buy-Back Program be conducted in accordance with the ILCA which authorizes the Secretary to enter into agreements with tribes to carry out some or all of the program activities, but makes clear that such agreements are not subject to the ISDEAA. We also asserted that the Trust Land Consolidation Fund be placed in an interest-bearing account so more monies could be generated for land consolidation activities.

Interior issued its initial Implementation Plan in December 2012. Again, we submitted comments on Interior's document, emphasizing that Interior should rely on tribes' experience and capabilities to implement the Program. In those comments, we also asserted our desire and capability to carry-out all four phases of Interior's Plan: outreach; land research; valuation and acquisition. We pointed out that through the Tribe's previous efforts with Interior approximately 187,235 acres were returned to tribal ownership under the ILCA. Through these efforts, the Tribe has achieved majority ownership of 847 allotments and 100% ownership of 59 allotments within the Pine Ridge Reservation. We asserted that our success with this land consolidation program underscored that the Tribe should be engaged in all aspects of the Buy-Back Program.

Interior's Initial Implementation Plan listed Pine Ridge as the most highly fractionated reservation in the Nation and identified a "purchase ceiling" of \$126 million<sup>1</sup> for purchasing fractionated interests on our Reservation. Interior's Plan explained that Interior would use mass appraisals to determine fair market value for purchasable interests. We stated our concerns with this as we want to make sure that if our members choose to sell, they receive fair value for their fractionated interests. We also expressed concerns about Interior's statements that it would work with tribes to the greatest extent possible to obtain the tribes' priority interests. We wanted a firm commitment that Interior will work with us to obtain such interests. Our concern has been that Interior will not spend the resources necessary to obtain such interests consistent with tribal priorities.

In February, Interior held a session in Rapid City to explain its Initial Implementation Plan to tribes. The reception from the tribes was less than favorable. There were several questions raised that Interior could not yet answer definitively. We engaged in a separate meeting with Interior just after that session as Interior was targeting Pine Ridge as a pilot location due to our high volume of fractionated interests. We began discussing how to work together at this time, but did not enter a cooperative agreement with Interior until late September.

The land consolidation plan we initially submitted to Interior sought to assume all phases of the Interior Buy-Back Program for implementation on Pine Ridge. Interior's position, however, was that if Interior can provide the services for less cost than a tribe, it would carry out those functions itself. Our plan's objective was to make sure we had all we needed to continue to carry out the Buy-Back Program activities when Interior moved on from Pine Ridge to implement the Buy-Back Program elsewhere. We currently have a strong Land Office and we looked to Interior's Program to help bolster our expertise for present and future work.

#### Cooperative Agreement Development

After our initial meeting in February, Interior engaged with us in face-to-face meetings and conference calls. Many of the nits and bolts discussions about capabilities and how the Program would be implemented were between Interior's Buy-Back Program and our Land Office. In the meantime, Tribal Officials discussed with Interior the desire to find a way for the purchase ceiling for Pine Ridge and accompanying administrative costs to be placed in an interest-bearing account. Tribal Officials also stressed that the Tribe could not be expected to bear upfront costs or, really, any costs for implementing the Program on Pine Ridge. The Tribe also asserted that adequate time for proper implementation of the Program on Pine Ridge was necessary.

Congress gave the Program ten years and our view is that Interior should use those ten years to ensure that Oglala Sioux members have ample opportunity to participate in the Program if they choose to do so. We reiterated that the last thing the Tribe wants is for Interior to rush the

<sup>1</sup> Interior's Updated Plan (November 8, 2013) sets the purchase ceiling for Pine Ridge at \$125.4 million.



Program on Pine Ridge and not allow for every effort to be undertaken to spend our \$125.4 million purchase ceiling on our Reservation. We also requested that Interior figure out a way to provide incentives to landowners to sell their interests. We also pressed for the opportunity to negotiate provisions of the cooperative agreement and for flexibility to allow for the Tribe to be involved in each phase of the Program.

As discussions went on, it became apparent that Interior's thinking was that it would conduct the land research, valuation and acquisition phases of the Program itself. In fact, Interior moved forward with conducting appraisals for purchasable interests on Pine Ridge, and became anxious to send out offers to owners before those appraisals expired. We again reiterated our concerns about the use of mass appraisals and questioned whether all factors were considered in the appraisal work.

Ultimately, we decided to work out a cooperative agreement with Interior for the Tribe to carry out activities of the Outreach Phase. We thought it best to participate in the implementation of the Program so we could make sure our members have all the information they need to make decisions about whether they want to sell their interests. The idea was that we would be able to seek additional scopes of work for other phases as we moved ahead, but that entering a cooperative agreement for Outreach would start things moving on Pine Ridge.

We had hoped for more negotiation about the provisions of our cooperative agreement. However, we understood that timing was such that we were up against the clock if we wanted Program dollars to begin to flow. Interior informed us that there was a deadline that we needed to meet if we did not want to get caught in the approximate two week funding freeze that occurs between fiscal years. Interior approved our Scope of Work and signed the cooperative agreement with no time for further negotiation if we were to meet the deadline before the fiscal year change. Ultimately, we accepted the cooperative agreement in the beginning of October so we could start our important Outreach work and receive funding for such activities as quickly as possible.

#### Cooperative Agreement Results and Ongoing Implementation

Under our cooperative agreement, we have been able to hire 12 employees, access necessary program equipment, and carry-out the planned Outreach activities to date. Outreach activities include identifying landowner contact information, developing and enhancing communication tools to notify owners about the Program, conducting face-to-face meetings, and creating educational programs about the Program. Our mission is to serve our members as the Program is being implemented. Staff has already been working hard for about two months and is currently gearing up for our big kick-off event on December 14<sup>th</sup>. We believe our Outreach activities are necessary for proper implementation of the Buy-Back Program on the Pine Ridge Reservation.

#### Concerns with Implementation and Recommendations

Good faith, consultation, cooperation and flexibility from Interior are necessary to ensure that the Buy-Back Program is successfully implemented on the Pine Ridge Reservation. While we have embarked on our Outreach activities and offers are soon to go out to landowners, we continue to have certain concerns about and recommendations for the Program's implementation on Pine Ridge. These are:

1. *The purchase ceiling for Pine Ridge must be spent on Pine Ridge.* Interior has identified \$125.4 million as a purchase ceiling for the Pine Ridge Indian Reservation. This evidences Interior's recognition of our Reservation's severe fractional interest problem. Interior must do everything in its power to expend our purchase ceiling on our Reservation. Funding identified for Pine Ridge should not be spent elsewhere. This will take effort, resources, and flexibility from Interior and a willingness to work closely with us and our members every step of the way.
2. *Adequate time must be allowed for the Buy-Back Program to successfully work on Pine Ridge.* Interior's Buy-Back Program is authorized for a period of ten years and one year has already passed. Interior's plan is to spend up to 18 or 24 months on any given reservation. We have consistently told Interior that given our size, our amount of fractionated interests and our remote and rural Reservation that we are going to need a lot longer than 18 months to implement the Program on Pine Ridge. Our members who may want to sell interests must be allowed time to become familiar and comfortable with the Program. Our view is that efforts should be ongoing on Pine Ridge throughout the Program's ten-year authorization.

At present, our cooperative agreement for the Outreach Phase is **only** for six months. Significantly, this started in the Fall and goes through the dead of Winter -- when temperatures are freezing, roads to many of our members' houses are often impassable and travel, in general, is difficult. The short length of time allotted for Outreach during the worst weather time of the year concerns us. We will need Interior to be flexible on the timeframe for Outreach to ensure that we meet our objectives and the needs of our members.

3. *Indirect costs should be provided at the Tribe's negotiated rate.* Per the ILCA, cooperative agreements entered into with tribes to carry out Buy-Back Program activities are not subject to the ISDEAA. This, however, does not mean tribes should not receive indirect costs to cover administrative costs associated with carrying out Program activities. We have a negotiated indirect cost rate agreement with Interior (the cognizant Federal agency under OMB Circular A-87) which established our indirect cost rate as 40.3% for all grants, contracts and other agreements with the Federal Government to which OMB Circular A-87 or the ISDEAA applies. OMB Circular A-87 applies to the Buy-Back Program. The rate is to apply to *all* programs administered by the Tribe.

Interior, however, is imposing a 15% indirect cost rate for the Buy-Back Program. It appears to be using the language in the Settlement Agreement that limits funds available for implementing the Program to 15% of the Trust Land Consolidation Fund to impose a 15% indirect cost rate on tribes. That language gives Interior \$285 million (15% of the \$1.9 Billion Fund) to implement the Land Buy-Back program. But, there is nothing in Settlement Agreement or the relevant laws that require, or even suggest, that Interior should provide a different indirect cost rate for the Buy-Back Program than a tribe would otherwise be allowed for its indirect cost rate with Interior.

Under Interior's 15% policy, tribes with a negotiated indirect cost rate higher than 15% will not being fully compensated for the indirect costs incurred in administering a cooperative agreement to carry out Buy-Back Program activities. The *Cobell* case established that Interior wrongfully administered Indian trust resources, and the Settlement established the Buy-Back Program as one the remedies for the Federal Government's malfeasance. Interior should not be allowed to shift costs, which should be borne by the Federal Government, to tribes through a 15% indirect cost rate cap.

This issue can easily be resolved through an amendment to the ILCA to clarify the matter. We suggest the following amendment to 25 U.S.C. § 2212(b)(3)(c):

*Section 2212(b)(3)(c) is amended to include "but will be subject to a tribe's negotiated indirect cost rate pursuant to OMB Circular A-87" after "[25 U.S.C. 450 et seq.]".*

4. *Incentives Needed.* The Tribe has certain priority tracts that it would like to acquire through the Program. We need to be able to offer incentives to the owners of these tracts. The base payment of \$75 offered to cover landowners' administrative costs may not be enough to induce owners to sell prioritized interests that the Tribe desires. Incentive payments should be allowed so tribes can access the interests they really want or need.
5. *Tribal Program needs must be met.* Our Tribal Buy-Back Program is doing the on-the-ground work. Program staff knows firsthand what is needed to provide effective and efficient Outreach services to our members for the Program to be a success. The Program's requests for additional necessary resources need to be justified, of course. But Interior must not be penny-wise and pound-foolish or short-sighted when reviewing such requests.

We appreciate the fact that Interior is concerned with exhausting its pot of money allocated by Congress to implement the Land Buy-Back Program and recognize that

Interior wants to maximize the monies available for actual purchases. However, \$285 million has been allocated by Congress to cover implementation costs of Program. Interior should make sure it uses this funding to effectively carry-out Program activities. This includes paying for legitimate tribal requests to facilitate their Program implementation efforts. It also includes fully reimbursing tribes for allowable indirect costs under indirect cost rate agreements with Interior under OMB Circular A-87. Short-sightedness on funding at the outset will only cause implementation problems down the line. Tribes that enter cooperative agreements with Interior need adequate funding and resources to do their parts of the Program successfully. Tribes should not have to beg for resources or bear burdens to carry out Program activities when a substantial funding stream exists for this purpose.

6. *Trust Land Consolidation Fund monies should not be returned to the United States Treasury at the end of ten years.* The Buy-Back Program was agreed to by the *Cobell* case parties as part of the settlement of the *Cobell* case. The Program is a monumental effort to address the severe fractionation of Indian lands and the many problems that creates. The Program should not be limited by a finite time period and "use-it-or-lose-it" framework. Tribes and Interior must have the time needed to do everything they can to address the serious fractionation problem. This includes spending all of the Trust Land Consolidation Fund on this effort.

At the end of the ten year period, we fully expect that Interior will have done all in its power to expend all of the Trust Land Consolidation Fund in an effective manner. Any Fund monies that remain should not be returned to the United States Treasury. Rather, they should be used to purchase fee lands or large tracts within reservations as identified by the tribes as part of their overall land consolidation efforts. At the very least, if any Fund monies remain, Interior should work with tribes to extend the time period allowed for the Program. Again, the Fund was agreed to as part of the *Cobell* Settlement. It would be a tragedy to have such Settlement monies returned to the Federal government, the party responsible for mismanaging the trust accounts and imposing the devastating allotment policy in the first place.

#### Conclusion

The Oglala Sioux Tribe is pleased to have the Program begin on our Pine Ridge Reservation and to be a part of it by carrying out important Outreach activities. We do, however, continue to have some overarching concerns about the Program's implementation. We want to work with Interior and Congress to ensure that it is implemented successfully and that the monies identified for Pine Ridge are spent on our Reservation.

## PREPARED STATEMENT OF THE FORT BELKNAP INDIAN COMMUNITY

The Fort Belknap Indian Reservation is located in north central Montana. The reservation is the homeland of the Gros Ventre and Assiniboiné people. Established in 1888, the reservation is what remains of the vast ancestral territory of the Blackfeet and Assiniboiné Nations. The Gros Ventre, as members of the Blackfeet confederacy, and the Assiniboiné Nation signed the Fort Laramie treaties of 1851 and 1855 with the United States Government establishing their respective territories within the continental United States. The Fort Belknap Reservation is part of what remains of these two nations ancestral territory that included all of central and eastern Montana and portions of western North Dakota. The Blackfeet, and Fort Peck Indian Reservations are also part of these territorial boundaries.

Fort Belknap Indian Reservation was created by an Act of Congress on May 1, 1888. The Fort Belknap Agency was established at its present location, four miles southeast of the present township of Harlem, Montana. Fort Belknap derives its name from the original military post that was established on the Milk River, one mile southwest of the present town of Chinook, Montana. The Fort, named for William W. Belknap who was the Secretary of War at that time, was a military fort combined with a Trading Post. It became a Government agency for the Gros Ventre and Assiniboiné Indians living in the area.

The Gros Ventre call themselves "AH-AH-NE-NIN" meaning the White Clay People. The Assiniboine refer to themselves as "Nakota" meaning the generous ones. The current reservation land consists of approximately 725,000 acres.

### Testimony

We are pleased to provide input for the Bureau of Indian Affairs (BIA) - **Land Buy Back Program**, on behalf of the 7,000 Gros Ventre and Assiniboine tribal members of the Fort Belknap Indian Reservation.

Representatives from Fort Belknap attended the Minneapolis, Seattle, and Rapid City, Tribal Consultations for the Cobell Land Buy Back Program and it was definitely frightening to say the least. We don't know what the other tribes who attended got out of the meeting but it is our understanding that the BIA has a mandate to spend \$1.9 billion dollars in the next ten years or the unspent money goes back to the treasury. The clock is already ticking and money is already being spent, but they *do not* have a clear plan to implement it in the Billings Area.

John McClanahan said the BIA needed the tribes to tell them how to do this plan and Tribes say why should we tell them how to do this, when we (Tribes) already know what we want in the program. The BIA's team is asking we as tribes to help them perpetuate their existence with resources that Tribes can fully use to finally open the door to self determination, to finally get out from under the thumb of the bureau, and to finally implement a solid Land Buy Back Plan that will really work in Indian Country.

We strongly feel that each tribe should be given their share of that administrative costs of \$285,000,000, based on the percentage of fractionated land they have on their respective reservations and give Tribes the remainder of the ten years to implement our own plans. Fort Belknap's share of these administrative costs would be approximately \$16 million dollars based on the BIA's figures and we will have a functional plan in less than two years. Our plan will take out all of the bureaucracy of the BIA and utilize current legislation which allows us to set the parameters for the most productive use of our lands.

Fort Belknap is projected to receive \$54 million dollars in funding for the Cobell Land Buy Back Program and we can administer our own program with this funding. If the Department of Interior would have distributed these funds to Fort Belknap earlier we could have put the funds into an interest bearing account and would have already gained additional funds to purchase more land from tribal members.

We have a number of questions in regards to what has happened to date with the BIA implemented program. Honorable Chairperson Cantwell and other members of this prestigious committee, you all need to be aware of this situation that is probably occurring nationwide but most importantly to Fort Belknap and what is happening at the Rocky Mountain Regional Office in Billings. To date the following has occurred.

1. A grant opportunity was announced on the Internet in July of 2013. Called an opportunity synopsis, opening and closing dates were specified along with the funding type.
2. A web resource for land owners was announced in August 2013. ***A large part of this announcement was to allow tribes to submit cooperative agreement proposals.*** According to the "STATEMENT OF WORK DEVELOPMENT INSTRUCTIONS, all proposals are now to be submitted on Standard Forms prescribed by the Bureau of Indian Affairs. SF-424 Application for Federal Assistance, And SF-424 A & B.

This came out after the Tribes were told they could submit cooperative agreements.

3. A Central Acquisition Center (CAC) is now open in Billings, MT. Up to 10 people will be employed at this site. The primary work load at the CAC is to do outreach and work on locating (WAU) Whereabouts Unknown potential clients. The bulk of work is being handled by CGI the contractor for the Land Buy Back Program. ***At this time, no Montana Tribes or Montana trust landowners have been contacted to sell their land by this acquisition center.*** This center was opened in August or September of 2013. We project this cost to be at least \$750,000 annually.
4. The Billings CAC center telephone message says ***"Welcome to the Bureau of Indian Affairs Land Buy Back acquisition center. Thank You for calling, leave name, number etc."*** This is clearly a BIA run operation.

5. The method of completing appraisals was announced as being acceptable under USPAP standards and most tracts will be appraised using the mass appraisal system. *OAS/OST has begun the process but how the minerals will be valued is still unknown.* The LBB is intent on purchasing both surface and mineral tracts at the same time.
6. Mapping of lands to be purchased will be done BLM using GIS mapping software. The process is reliable and accurate as is the appraisal process, the question remains, *'Who is paying for these services?'*
7. The LBB office headed by John McClanahan has been in operation for over one year. How many **BIA** employees are working for LBB and how much money has been spent of the administrative funds set aside specified in the Cobell Settlement Agreement? No one has reported this information to the Tribes.
8. All the meetings and consultations held to date have been attended by top officials from the **BIA** and the LBB program. How much travel costs have these individuals incurred toward the administrative costs while the Tribal delegations traveled on their own financial resources? Again, no one has reported to the Tribes.
9. A ten year time period was established by the Cobell Settlement Agreement. Almost two years of that time period have already passed, **BIA** has not yet outlined how they will proceed and when they will get to the large land based tribes, as Tribes in Montana and the Dakotas hold a majority of trust land in the US.
10. The united voice of Indian country has consistently opposed the **BIA** having any administrative authority over what the Tribes believe to be their money and money due landowners for specific wrongs found in the Cobell litigation. This money should not be used to fund any **BIA** staff or program under the guise of a Land Buy Back Program.

In summary, Tribes have the opportunity to implement and complete a historic Land Buy Back Program on their reservations but it can only happen if the Tribes are full participants in this process. The **BIA** is looking to spend \$285,000,000 in ten years for administrative costs that should be going to Tribes. The **BIA** was established two hundred years ago to help the tribes become self sufficient. Today nothing has changed. We are still getting rations (commodities), we still can't do anything without **BIA** approval (contracts & self-governance), there are volumes of legislation to assist and guide the **BIA** to make tribes self reliant, yet two hundred years later, we are still being lead down blind alleys with little or no success towards self-determination. The **BIA** is still ambivalent as to their defined



purpose. Two hundred years later we have Cobell, Keeps Eagle and Youpee judicial victories which prove the BIA specifically and the US government in general have all been wrong. All of these cases are directly connected to our tribal land holdings and all are stark failures of BIA policy. Two hundred years later we are at the door step to make something great happen with Cobell and the BIA is still trying to control our destiny but their plan or purpose is as clear as mud.

In order to have the Fort Belknap Indian Community's - Land Buy Back Program started we must get our Cooperative Agreement approved by the BIA. Please help us with this initial task and we can begin to implement our own program.

I thank you for your time and attention on this subject as it is of great importance to many Indian Tribes and especially the Fort Belknap Indian Community Council.

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PREPARED STATEMENT OF HON. JOHN BERREY, CHAIRMAN, QUAPAW TRIBE

#### *Introduction*

On behalf of the Quapaw Tribe of Oklahoma (O-Guh-Pah, or the Tribe), I submit this Statement for the Record for the Committee on Indian Affairs' Oversight Hearing on the "Implementation of the Department of the Interior's (DoI) Land Buy-Back Program," held on December 11, 2013.

As the Committee knows, the enactment of the *Claims Resolution Act of 2010* included a legislative settlement of the *Cobell v. Salazar* trust lawsuit which, in turn, included the "Land Buy-Back Program for Tribal Nations" (Buy-Back Program).

The Buy-Back Program is a \$1.9 billion dollar fund available to the Secretary of the Interior (Secretary) for a ten-year period to purchase fractionated interests in trust or restricted land from willing sellers, at fair market value. Parcels purchased pursuant to the Buy-Back Program will be conveyed to tribal governments for their use.

#### *Background on the Quapaw Tribe of Oklahoma*

The Tribe is located in far northeastern Oklahoma and has 4,500 tribal members. The Tribe is a Self-Governance tribe, and provides a wide array of services and programs for its members as well as for the benefit of the surrounding community.

Tribally-provided services include the Tribe's Marshal Service, Fire and Emergency Services, and tribal courts. The Tribe also operates two daycare centers, a library, a drug treatment facility, and elder housing facilities.

The Tribe is not only a full partner on joint projects with the States of Oklahoma, Kansas and Missouri, but demonstrated how integral it is to the region in 2011 when a devastating tornado hit neighboring Joplin, Missouri. The Tribe deployed a large number of its staff in the wake of the tornado, including its Emergency Medical Teams, its Law Enforcement personnel and others to assist the city and its residents recover from this horrifying event.

***Background on the Quapaw Tribe of Oklahoma's Jurisdictional Land Area***

Despite the allotment and loss of restricted Indian lands in past decades, the Quapaw Reservation in Oklahoma consists of 57,000 acres, including a relatively high percentage of Indian lands and lands title to which is held by the Tribe or individual members subject to restrictions by the U.S. against alienation.

The DoI's own analysis suggests that there are 16,337 acres associated with fractionated interests representing 3,477 purchasable fractional interests. A high percentage of these lands are within the boundaries of the Tar Creek Superfund Site, created to address contamination resulting from historic lead and zinc production related to U.S. war efforts in the early part of the 20th century.

Many of the former mining leases hold piles of tailings known as "chat," which in itself is considered a trust asset. Under U.S. Environmental Protection Agency (EPA) guidelines, chat may be safely used as a road construction material. Acting as a liaison between chat owners and the EPA, the Tribe has developed a sophisticated understanding of land ownership, the inclination of land owners to part with their fractionated parcels, and a sophisticated communication network that, taken together, put the Tribe in a unique position to expedite the buy-back process.

***Quapaw Tribe's Capacity and Experience to Ensure Success in Land Purchases***

In 2001, the DoI approved the Tribe's land consolidation plan, making the Tribe one of the earliest participants in the "Indian Land Consolidation Program" (ILCP) administered by the Bureau of Indian Affairs (BIA). With a \$1 million federal appropriation in 2003, the Tribe effectively and efficiently acquired fractionated interests in Indian lands within its jurisdictional land area.

In 2009, the Tribe assumed responsibility for BIA realty, trust and probate functions and in the last four years has developed a sophisticated and effective program for acquiring fractionated lands, as well as in managing leases, permits and other encumbrances. In fact, because of federal funding shortfalls, the BIA was unable to fully fund the realty and related appraisal functions, obliging the Tribe to spend its own money to build the program.

As a result of Tribal initiative, today the Tribe's Realty Department consists of five seasoned professionals, including a director, two realty specialists, a realty compliance specialist, and a realty assistant. This department maintains all of the Indian land records for the Tribe's original reservation, including ownership records and an inventory of encumbrances on these lands. Department staff routinely makes use of a Geographic Information Systems realty database which contains a map of the reservation showing all of the trust and restricted lands --- tract by tract --- along with associated ownership information. The department also has multiple, experienced and duly-licensed appraisers in its service. Significantly, over the last 24 months, the department has processed more than 200 sales of restricted interests which are awaiting BIA approval.

*The Buy-Back Program and the Tribe's Proposed Cooperative Agreements*

The DoI's initial Buy-Back Program was issued in December 2012 and the Tribe held several meetings with departmental officials about the Program, how it would operate, and how the Tribe could help the DoI maximize land acquisition funds included in it.

This Buy-Back Program broke down the land consolidation process into four phases:

- (1) outreach;
- (2) land research;
- (3) valuation; and
- (4) acquisition.

Responding to the DoI's Buy-Back Program, in March 2013, the Tribe submitted to the DoI its initial proposal for a cooperative agreement. In it, the Tribe proposed to conduct buy-back activities in all four phases. After subsequent meetings with departmental officials, in July 2013, the Tribe submitted a revised proposal for a cooperative agreement.

*Need for Immediate Action to Ensure the \$1.9 Billion is Properly Used*

The Buy-Back Program terminates in 2022 and to date, the DoI has yet to implement the Program in earnest. The fact is that, unless used within this timeframe, any funds made available to the Secretary under the Buy-Back Program will revert to the U.S. Treasury. Having made a large sum available for re-consolidating fractionated interests, it is unlikely Congress will have any appetite for additional funding for these purposes.

The Tribe's situation is unique in many respects and strongly argues in favor of the DoI entering a cooperative agreement with it in the near-term. The Tribe

- (1) has a discrete number of member - landowners with demonstrated willingness to sell their fractionated parcels;
- (2) has a sophisticated and seasoned realty department capable of engaging the DoI immediately;
- (3) has demonstrated its practical experience by designing and implementing its ILCP over the course of the last 12 years; and
- (4) is willing to deploy its apparatus in conjunction with the DoI without any request for federal administrative funds to accomplish the objectives of the Buy-Back Program.

I very much appreciate the opportunity to submit this Statement for the Record and respectfully urge the Committee to continue its oversight of this once-in-a-lifetime program to help re-consolidate fractionated Indian lands.

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**\*Response to the following written questions was not received before the hearing's print deadline\***

WRITTEN QUESTIONS SUBMITTED BY HON. TIM JOHNSON TO  
HON. LAWRENCE ROBERTS

*Question 1.* In my home state of South Dakota, the Oglala Sioux Tribe was the first tribe to enter into a Cooperative Agreement with the Department of the Interior to implement the Land Buy-Back program. In mid-December, 2013, owners of fractionated land were given purchase offer packets to be completed in 45 days. The Oglala Sioux Tribe is one of the most fractionated reservations. How will the Interior work with the tribal land buy-back program to address issues that arise in the first venture of purchasing fractionated interests?

*Question 1a.* Mr. Roberts, you stated that it is expected that hiccups and issues will arise in the start of purchasing fractionated interests. If solutions to problems

are made to improve the program during this introductory phase, will the Interior re-extend purchase offers to those land owners who did not take offers due to unforeseen issues?

*Question 1b.* Does the Interior have the ability to be flexible on the 45 day period timeframe that purchase offer packets are due?

*Question 2.* During the December 11, 2013 hearing, the topic of administrative costs was discussed. Mr. Roberts you stated that it was the goal of the administration to spend less than the allocated amount to maintain the buy-back program. What will happen to the remaining funds?

*Questions 3.* I have heard many concerns regarding the 15 percent cap for administrative costs for tribes entering into cooperative agreements. Legislatively, a 15 percent cap is not specified. In the *Cobell* Settlement Agreement it is stated that "An amount up to a total of no more than 15 percent of the Trust Land Consolidation Fund shall be used for purposes [of implementing the Land Consolidation Program]." The reading of this language does not specify that each tribe should have a cap of 15 percent, but that the cap of 15 percent is aimed at the total use of the Trust Land Consolidation Fund. How did the Interior decide to place a cap of 15 percent for administrative costs for tribes entering into cooperative agreements?

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WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO  
HON. LAWRENCE ROBERTS

*Question 1.* While the *Cobell v. Salazar* litigation was about mismanagement of individual Indian trust accounts and resources, Indian tribes have a lot to gain from the \$1.9 billion Land Buy-Back Plan for Tribal Nations. After individual's interests in land are purchased, these interests and lands will be returned to tribes to hold consolidated tribal ownership and address some of the long-standing problems of allotment. Once lands are consolidated tribes will have a much easier time developing those lands to serve their communities. Given the significant tribal interests in the Program what has the Department done to ensure that the Buy-Back Program benefits tribes? And, what has the Department done to provide tribes with the opportunity to direct how the Buy-Back Program will be implemented on their reservations?

*Question 2.* The *Cobell v. Salazar* Settlement Agreement and the Claims Resolution Act of 2010 said the Secretary shall purchase lands in accordance with the Indian Land Consolidation Act (ILCA) and the Land Consolidation Program which also incorporates ILCA. ILCA says tribes shall lead buy-back efforts on their reservations. Given the significant role ILCA provides tribes, is the Department following the law and providing tribes with leadership role in the Land Buy-Back Plan for Tribal Nations? I understand tribes can enter into Cooperative Agreements with Interior, but do these Cooperative Agreements provide tribes with leadership roles as the law requires?

*Question 3.* I understand some tribes have found the negotiation process for a Cooperative Agreement to be unduly complex and burdensome. What is the Department doing to improve the process and quickly finalize these agreements so we can get people on the ground buying back land for tribes?

*Question 4.* One of the Program's most important goals is to consolidate small fractionated interests. I understand the Department plans to include a base payment of \$75 dollars in every offer to purchase fractionated interests in lands. The Department describes this payment as compensation for a land owner's time and expenses in responding to an offer. The Department makes clear it is not providing a minimum payment to help incentivize the purchase of small fractionated interests. To promote the sale of small fractionated interests and the overall success of the Program, tribes have recommended minimum payments of \$500 for each fractionated interest. Why did the Department decide not to provide a minimum payment for small fractionated interests? What is the Department's plan if the \$75 base payment is ultimately too low to incentivize enough small fractionated interests to sell?

*Question 5.* Indian energy development has been an incredible benefit to tribes across the country, including the Mandan Hidatsa and Arikara Nation located in my state. In such areas where minerals have high development potential, owners may be willing to sell their interest in a surface estate but unwilling to sell their interest in the mineral estate. However, on page A-2, the Department's Updated Implementation Plan states the Department "will not make bifurcated offers to purchase surface and mineral interests separately because such purchases would not reduce fractionation." By consolidating interests in the surface estate, the Depart-

ment would streamline approvals for right-of-ways, surface leasing necessary for the development energy resources, and energy transportation corridors. Wouldn't it be beneficial for the Department to reduce surface fractionation wherever it could and, particularly, where energy development is occurring?

*Question 6.* Also on page A-2 of the Department's Updated Implementation plan, the Department states that it is "considering including a minimum base payment for mineral interests in offers sent to landowners, in accordance with past Bureau of Indian Affairs (BIA) land consolidation activities." The tribes I have spoken with have not been provided information about a base payment for mineral interests. Will this minimum base payment be an incentive payment to promote the success of the Program, or merely compensation for an owner's time and expenses in responding to an offer? Will this minimum base payment be based on mineral appraisals? What will be the amount or the range for this minimum base payment?

