S. HRG. 114–138

A PATH FORWARD: TRUST MODERNIZATION AND REFORM FOR INDIAN LANDS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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CONTENTS

WITNESSES

APPENDIX

A PATH FORWARD: TRUST MODERNIZATION AND REFORM FOR INDIAN LANDS

WEDNESDAY, JULY 8, 2015

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

The CHAIRMAN. Good afternoon. I call this hearing to order.

Before we begin, I would like to mention the Senate's passage yesterday of S. 286, the Department of the Interior Tribal Self-Governance Act of 2015. I believe this to be a great step forward for Indian Country. S. 286 is a common sense bill supported by tribes across the Country and by the Administration. It will give tribes a better opportunity to advance the policy of tribal self-governance, reduce Federal bureaucracy and promote accountability.

I want to thank Senator Tester, Vice Chairman of this Committee, and other co-sponsors, and all the members of the Committee, for their work to get S. 286 through the Senate. Now I call on our colleagues in the House to act quickly so we can send this important bill to the President for signature.

Today the Committee will hold an oversight hearing entitled A Path Forward: Trust Modernization and Reform for Indian Lands. It is time that we take a new look at the status quo by breaking free from old mind sets and burdensome processes and finding a path forward together. For far too long, Indian lands have been tied up in bureaucratic red tape that hinders Tribes' sovereignty over their land and ability to lead their people into a prosperous 21st century.

It is time to reform the outdated rules and regulations that are tying the hands of tribes striving for greater respect, independence and success. Outdated Indian land policies must be modernized to encourage local cooperation, economic development and freedom from excessive Federal intervention for the betterment of Indian Country.

Tribes are ready, willing and able to direct the management of their lands and affairs. We must support those tribes working to do this so that they can actually achieve robust self-determination. It is about time for Federal policy to catch up with modern times.

One of those changes in policies has to do with eliminating, downsizing or transferring duties from, the Office of the Special Trustee to the Office of Assistant Secretary for Indian Affairs. It is clear that the Office of Special Trustee was never meant to be a long-term office at the Department of the Interior. As it stands, there is a duplication of efforts within Interior that is burdensome, confusing and costly.

I will note that the Committee invited the heads of both key offices to testify today. Yesterday the Department of the Interior decided against sending the Special Trustee, Vince Logan. So Assistant Secretary Washburn will be testifying on behalf of the Department about the role of the office of Special Trustee. I think this underscores some of the questions we will hear today about whether the Office of Special Trustee has outlived its purpose.

There also needs to be a common sense and streamlined approach with regard to taking land into trust. I appreciate the Administration's ongoing efforts in this regard, but we can do better. In each session since the 111th Congress, a member from this Committee has introduced legislation calling for a clean fix to the Supreme Court's *Carcieri* decision. It is clear from past efforts there are no shortcuts.

I know from the *Carcieri* roundtable I hosted earlier this year that more work needs to be done to cross the finish line. I look forward to working with the Committee to craft a winning solution for Indian Country.

Before we hear from the panel, I ask if there are any other members who would like to make an opening statement. Senator Crapo.

STATEMENT OF HON. MIKE CRAPO,
U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you, Mr. Chairman, for holding this important oversight hearing on trust reform and associated issues.

Let me begin by introducing and welcoming a good friend, Vice Chairman Ernest Stensgar of the Coeur D'Alene Tribe, who has traveled here from Idaho to be with us today to testify on Senate Bill 383, the Indian Trust Asset Reform Act. Ernie has been a true leader on this issue, serving as Chairman of the trust reform committee with the Affiliated Tribes of Northwest Indians, and has extensive knowledge and background on trust asset reform.

As Ernie will attest, the Coeur D'Alene Tribe has long sought to increase tribal management and control over its own resources and assets, which is the primary goal of this bill. For too long, Federal policies have been overly paternalistic and burdensome, which has limited opportunities for Native peoples. We are long overdue for a change in direction when it comes to trust asset management.

Members of this Committee know that trust modernization remains a priority for Indian Country. Under the current system, non-monetary tribal assets such as land and natural resources held in trust by the Federal Government require extensive bureaucratic hurdles to be overcome before any tribe may utilize those assets for the benefit of its members. This is simply unacceptable and is not in touch with Federal policies of promoting greater tribal self-reliance.

Earlier this year, in consultation with the Coeur D'Alene Tribe and others, I introduced S. 383. My Idaho colleague, Senator Jim Risch, joined me as an original co-sponsor and Idaho's two Representatives, Mike Simpson and Raul Labrador, have been leading the effort in the House of Representatives.

The Coeur D'Alene Tribe has been a leading partner on S. 383, which would allow tribes, on a voluntary basis, to submit long-term management plans for tribal resources to promote economic activity and Indian self-determination. Under the bill, the Secretary of the Interior would have the authority to approve such tribally-directed asset management plans.

Further, the bill would also provide for reforms to the management structure within the Department of the Interior to reduce regulatory red tape that tribes face when trying to utilize trust resources.

The bill would also require a report to be submitted to Congress on the asset management functions and the roles of the Bureau of Indian Affairs and the Office of Special Trustee. Indian Country has long complained that the involvement of both the Bureau of Indian Affairs and the OST in day-to-day transactions has resulted in miscommunication, delay and inefficiency.

To remedy this, the report provision contained in S. 383 requires a plan to be submitted to Congress on how to streamline these functions. S. 383 has been endorsed by the National Congress of American Indians and the Affiliated Tribes of Northwest Indians, which includes approximately 60 member tribes in Idaho, Washington, Oregon, Montana, California and Alaska. Other national and regional tribal organizations and individual tribes have previously endorsed the concepts contained in this bill.

I will let Ernie share additional details on S. 383 and what it would mean for the Coeur D'Alene Tribes and other Native communities in his testimony. I will simply close my remarks by once again thanking him for agreeing to testify before the Committee today.

Thank you, again, Mr. Chairman, for holding this hearing. I look forward to our discussion on S. 383 and hearing from all of our witnesses.

The CHAIRMAN. Thank you, Senator Crapo.

Any other members who would like to be heard? Senator Udall.

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you very much. Let me thank the Chairman and Vice Chairman for holding this hearing.

The Federal Government's trust obligations have been the subject of numerous breach of trust lawsuits related to the functions of the Federal Government and how it carries out these activities on behalf of the tribes. Clearly, there is a disagreement on a number of fronts. I know Senator Crapo has a bill, The Navajo Nation, has talked to me about a bill. There are proposals circulating, there are a number of issues floating out there.

I think today's hearing is a good opportunity to have a conversation about Federal trust responsibility and how that looks for the future. We should do this, taking the best expertise from the De-

partment. I am very happy to see that Secretary Washburn is here to give us his testimony. I have read his statement. I think it is a very, very good statement in terms of giving us an overview.

With that, I look forward to today's hearing and witnesses. I yield back.

The CHAIRMAN. Thank you. Any other members who wish to be heard?

Senator Tester.

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

Senator TESTER. Just really quickly. I will ask that my full statement be put into the record.

I want to thank Kevin for being here. I want to thank the representatives from the Tunica-Biloxi Tribe and the Coeur D'Alene Tribe for being here also.

But I would just say, I look forward to this conversation. I know there are some who serve in Congress who think that recognition should be totally our job. I am talking about the folks in the Senate and the House, and not the Department's job. I think that was the risk before a wreck by politicizing your recognition. I think, Kevin, you have done a respectable job in trust reform. I would love to hear about it and love to hear the direction that the Department anticipates this going as we move forward.

With that, Mr. Chairman, thank you for holding this hearing.

[The prepared statement of Senator Tester follows:]

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

Thank you, Mr. Chairman, for holding this hearing today on my land-into-trust bill and Senator Crapo's trust reform bill. I know these bills have broad support and I am happy that this Committee can continue to make progress on important tribal issues.

Last month, this Committee reported out a bill that had broad support among tribes and which would protect tribal sovereignty by providing parity with state governments.

I think my bill falls into a similar category. S. 732 would provide parity among all tribes after a wrong decision by the Supreme Court called into question the authority of the Secretary to place land into trust for many of our tribal nations.

S. 732 has immense tribal support, and has bipartisan support both here in the Senate and in the House. One bill in the House has over 30 cosponsors, and half from each party. So this really is a bipartisan effort, and I think we have a real chance to see a *Carcieri*-fix get enacted. I want to thank my colleague Senator Moran and others on the Committee for cosponsoring this bill.

The Administration has consistently asked for this no-cost fix each year in its budget, and I think all or nearly all of the national and regional tribal organizations have stated their support for fixing this issue. Last Congress, even the U.S. Chamber of Commerce wrote a letter in support of this fix.

Letting this Supreme Court decision continue to stand creates two classes of tribes. This is simply not fair and it inhibits economic development on tribal lands. I think we can all agree we need less obstacles to tribal development, not more.

As for trust reform, I agree that we need to look into this issue. Over the last five years we've settled over 70 trust-mismanagement cases with tribes, and of course there is the Cobell settlement that dealt with trust-mismanagement of assets held for individual Indians. Due to those cases, even the Secretary of the Interior established a Commission on Trust Reform, which issued its report at the very end of 2013.

We held a hearing on these issues last year, so I appreciate the Committee continuing to look at how to address these issues. I'm interested to hear the Administration discuss their ongoing trust modernization efforts. As always, I want to thank the witnesses for the work they do, and for their time in coming here today.

The CHAIRMAN. Thank you very much, Senator Tester.

Today we are going to hear from our witnesses, the Honorable Kevin Washburn, Assistant Secretary, Indian Affairs, U.S. Department of the Interior; the Honorable Ernie Stensgar, who was already introduced by Senator Crapo. He is Vice Chairman, Coeur d'Alene Tribe, Plummer, Idaho. And we have the Honorable Brenda Lintinger, Councilwoman, Tunica-Biloxi Tribe of Louisiana, in Marksville, Louisiana, and Secretary, United South and Eastern Tribes of Nashville, Tennessee.

I want to remind the witnesses that your full written testimony will be part of the official hearing record. So please keep your statements to under five minutes so that we may have time for questions. I look forward to hearing your testimony, beginning with Mr. Washburn. Please proceed.

STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. WASHBURN. Thank you, Chairman, Vice Chairman and members of the Committee. Congratulations on the passage of S. 286. That truly is a great step forward, and I hope that we can get it passed on the House side soon. It is a great step forward for tribal self-governance.

The title of this hearing is involving trust modernization. Let me say, the key to trust modernization is tribal self-determination and tribal self-governance. The United States has a solemn trust responsibility to Indian nations and Indian people, and it can perform the functions necessary to meet that responsibility in a paternalistic fashion, as it did for many decades, or it can take a more modern approach.

I believe that the more modern approach, the one preferred by the Obama Administration, has two hallmarks. First, we should consult frequently with tribes to ensure that the Federal Government does what tribes think best. Second, we should contract with tribes to provide the goods and services to Indian people, because they know better how to meet the trust responsibility if we give them adequate resources. So our approach has the effect of furthering the trust responsibility but also while expanding tribal sovereignty and tribal capacity.

The Obama Administration has worked hard to ensure that we are restoring lands to tribes where they have authority to exercise self-governance. We have been restoring tribal homelands. We have taken more than 300,000 acres of land into trust for tribes. We also, through the Cobell settlement and the Land Buyback Program, have consolidated more than 900,000 acres to tribes. So it is really starting to make a huge difference, frankly.

On our land into trust efforts, we proceed very carefully, of course. One of the subjects that seems to come up around trust modernization and trust reform and a *Carcieri fix* is, how do we deal with all the stakeholders that have an interest in land into trust. I assure you that we seek the input from stakeholders and we carefully consider the input they provide.

We specifically ask State and local governments for their views and we ask them to submit their views in writing. We give very

special consideration to State and local governments when it comes to land into trust issues. So we really want to know their views. That is why we go to all that effort.

I will tell you that trust land applications that move through the process most swiftly those in which the tribe and the local governments and the State all agree. When we have come to agreement on important issues such as provision of services and other key elements, those applications tend to work out really quickly. We don't disapprove a lot of trust land applications, but they languish a lot of times when they don't have agreement with the State and local governments. Those are the ones that don't move through the process very quickly. And so working with State and local governments is often key to success.

We have also done trust modernization in Alaska. We have put the world on notice that we will begin using the authority to take land into trust in Alaska soon. We think that is a great step forward.

Leasing, we have modernized our trust responsibilities around leasing of Indian lands. We have updated our own leasing regulations to be more deferential to tribal decisions. Congress has passed and the President signed the HEARTH Act in 2012, which allows tribes to take over this function from the BIA. Roughly 20 tribes have taken advantage of the HEARTH Act and taken over leasing on their lands.

We are also working to move this direction with rights of way, working to modernize our rights of way regulations.

Now, the Committee heard a hearing two weeks ago on dual taxation. I wasn't here in the room, but I did watch it on the video. The Committee has expressed great frustration over our inability to solve this very serious problem. Frankly, I am frustrated by it and the President is very frustrated by it too.

One of the problems is that short-term fixes are not easy. And they are short term. The long-term fix, of course, involves not just education but also jobs and economic development on Indian reservations. Indian people need jobs and tribal governments need resources to provide economic development and social services.

One of the most significant challenges to economic development on Indian lands is the problem of dual taxation, the idea that State governments can tax on reservation economic activity. State taxation crowds out the ability of tribes to engage in taxation on Indian lands. If tribes impose additional taxes for those activities, then no business is going to want to locate there.

I don't think it will surprise many people to say that taxes can kill economic development. That is why the Obama Administration has been working hard to prevent dual taxation on Indian reservations.

The Administration has limited authority to address this issue, but we are working hard on it. We need Congress to take this issue seriously. So if you really want to get serious about important issues like Indian youth suicide, then we have to improve tribal economic development on these Indian reservations. Addressing the dual taxation problem is an important step toward trust modernization to address that.

Let me stop there and hold for questions and turn it over to Chairman Ernie Stensgar.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Barrasso, Vice Chairman Tester, and Members of the Committee, my name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department for this oversight hearing titled "A Path Forward: Trust Modernization & Reform for Indian Lands."

One of the Obama Administration's highest priorities is to restore tribal homelands by taking lands into trust for tribes. Our work to restore Tribal lands was explicitly authorized by Congress in Section 5 of the Indian Reorganization Act of 1934. Under this authority, the Obama Administration has taken more than 300,000 acres of land into trust for tribes since 2009. Much remains to be done in this area, of course, and a clean Carcieri fix is a necessary requisite to providing land in trust for all tribes.

Of course the Administration's settlement of the Cobell lawsuit produced an expansive trust land initiative for tribes to ameliorate the problems associated with fractionated parcels of trust lands. In the legislation enacting the Cobell settlement, Congress authorized the Department to spend approximately $1.55 billion to consolidate fractionated trust interests. The Department has purchased the equivalent of roughly 900,000 acres of fractionated lands and restored it to tribes. These are historic efforts to modernize our relationship to tribes by correcting past mistakes in federal policy.

The Indian Reorganization Act

In 1887, Congress enacted the General Allotment Act. The General Allotment Act divided tribal land into 80- and 160-acre parcels for individual tribal members. The allotments to individuals were to be held in trust for the Indian owners for no more than 25 years, after which the owner would hold fee title to the land. So-called "surplus lands," that is, those lands that were not allotted to individual members, were taken out of tribal ownership and conveyed to non-Indians. Moreover, many of the allotments provided to Indian owners fell out of Indian ownership through tax foreclosures, particularly during the Great Depression.

The General Allotment Act resulted in an enormous loss of tribally owned lands, and is responsible for the current "checkerboard" pattern of ownership and jurisdiction on many Indian reservations. Approximately ⅔ of tribal lands, amounting to more than tens of millions of acres, were lost as a result of the land divestment policies established by the General Allotment Act and various homestead acts. Moreover, prior to the passage of the General Allotment Act, many tribes had already endured a steady erosion of their land base during the removal period of federal Indian policy.

The Secretary of the Interior's Annual Report for fiscal year ending June 30, 1938, reported that Indian-owned lands had been diminished from approximately 130 million acres in 1887, to only 49 million acres by 1933. Much of the remaining Indian-owned land was considered "waste and desert." According to Commissioner of Indian Affairs John Collier in 1934, tribes had lost 80 percent of the value of their land during this period, and individual Indians realized a loss of 85 percent of their land value.

In light of the devastating effects on Indian tribes of its prior policies, Congress enacted the Indian Reorganization Act in 1934. Congress's intent in enacting the Indian Reorganization Act was three-fold: to halt the federal policy of allotment and assimilation; to reverse the negative impact of allotment policies; and to secure for all Indian tribes a land base on which to engage in economic development and self-determination.

The first section of the Indian Reorganization Act expressly discontinued the allotment of Indian lands. The next section preserved the trust status of Indian lands in perpetuity. In section 3, Congress authorized the Secretary of the Interior to restore tribal ownership of the remaining "surplus" lands on Indian reservations. Most importantly, in Section 5, Congress authorized the Secretary to secure and return tribal homelands by acquiring land to be held in trust for Indian tribes, and authorized the acquisition of land in trust for individual Indians. That section has been called "the capstone of the land-related provisions of the [Indian Reorganization

Act].” Cohen’s Handbook of Federal Indian Law § 15.07[1][a] (2005). The Indian Reorganization Act also authorized the Secretary to proclaim new reservations.

The United States Supreme Court has recognized that the Indian Reorganization Act’s “overriding purpose” was “to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.” *Morton v. Mancari,* 417 U.S. 535, 542 (1974). Congress recognized that one of the key factors for tribes in developing and maintaining economic and political strength lay in the protection of each tribe’s land base.

Acquisition of land in trust is essential to tribal self-determination. Tribes are sovereign governments and trust lands are a primary locus of tribal authority. Indeed, many federal programs and services are available only on reservations or trust lands. The current federal policy of tribal self-determination is built upon the principles Congress set forth in the Indian Reorganization Act and reaffirmed in the Indian Self-Determination and Education Assistance Act. Through the protection and restoration of tribal homelands, this Administration has sought to live up to the standards Congress established eight decades ago and indeed to reinvigorate the policies underlying the Indian Reorganization Act.

Most tribes lack an adequate tax base to generate government revenues, and many have few opportunities for economic development. Trust acquisition of land increases opportunities for economic development and helps tribes generate revenues for public purposes.

The benefits to tribes are many. For example, trust acquisitions provide tribes the ability to enhance housing opportunities for their citizens. Trust acquisitions also are necessary for tribes to realize the tremendous energy development capacity that exists on their lands. Trust acquisitions also allow tribes to grant certain rights-of-way and enter into leases necessary for tribes to negotiate the use and sale of their natural resources. Additionally, trust lands provide the greatest protections for many communities who rely on subsistence hunting and agriculture that are important elements of tribal cultures and life ways.

Though the General Allotment Act was enacted and then repudiated long ago, tribes continue to feel the devastating effects of the policy that divided tribal lands, allotted parcels to individual tribal members and provided for the public sale of any surplus tribal lands remaining after allotment. Taking land into trust can address those negative effects.

The Department of the Interior’s Fee-to-Trust Regulations

The Secretary has delegated the power to take land into trust to the Assistant Secretary—Indian Affairs. For most applications, the power is further delegated to officials in the Bureau of Indian Affairs (BIA). When the Department acquires land in trust for tribes and individual Indians under the Indian Reorganization Act, the Department must use discretion following careful consideration of the criteria for trust acquisitions in the Department’s regulations at 25 C.F.R. Part 151 (151 Regulations), unless Congress mandates that the Department acquire the land in trust. These regulations have been in place since 1980, and have established a clear and consistent process for evaluating fee-to-trust applications that considers the interests of all affected parties.

The 151 Regulations establish clear criteria for trust acquisitions. The Secretary or her delegate must consider additional criteria in acquiring land that is outside of a tribe’s existing reservation, rather than within, or contiguous to, its existing reservation. Taking land into trust is an important decision, not only for the Indian tribe or individual Indian seeking the determination, but for the local community where the land is located. For example, the transfer of land from fee title to trust status may have tax and jurisdictional consequences that must be considered before a discretionary trust acquisition is completed.

The Part 151 process is initiated when a tribe or individual Indian submits a request to the Department to have land acquired in trust. The regulations require that an applicant submit a written request describing the land to be acquired and other information. Once a request arrives at the BIA agency or regional office, it is entered into the BIA’s Fee-to-Trust Tracking System. The request is reviewed to determine whether all information has been submitted and whether there are additional steps needed to complete the application. The BIA works with the applicant to complete the application.

The regulations require that an application for fee-to-trust contain the following:

- a written request stating that the applicant is requesting approval of a trust acquisition by the United States of America;
- identification of applicant(s);
- a proper legal land description;

- the need for acquisition of the property;
- purpose for which the property is to be used; and
- a legal instrument such as a deed to verify applicant's ownership.

In addition, Tribal applicants must also submit the following:

- Tribal name as it appears in the Federal Register;
- statutory authority; and,
- if the property is off-reservation, a business plan and location of the subject property relative to state and reservation boundaries.

An individual Indian applicant is also required to submit the following: evidence of eligible Indian status, acreage of trust or restricted Indian land already owned by the applicant, and information or statement from the applicant addressing the degree to which the applicant needs assistance in handling its affairs.

The BIA must take several internal steps necessary to assess the application. These include determining whether the land is located within, or contiguous to, the applicant's reservation, and whether the trust acquisition is mandated by existing law or falls within the Department's discretion to take lands into trust. The BIA must assess whether the land is currently under the tribe's jurisdiction and, if not, whether there are any additional responsibilities the BIA would assume if the fee land were taken into trust. Finally, the BIA may also need to determine whether the property lies within the Indian tribe's approved Land Consolidation Plan.

The BIA requires additional information if a tribe seeks to have land acquired in trust not located within or contiguous to its reservation. The BIA will request a business plan if the land is to be used for economic development. If the land is within the reservation of another Indian tribe, the applicant must receive written consent from the other tribe's governing body if the applicant does not already own a fractional trust or restricted fee interest in the property to be acquired. If the land is off-reservation, the BIA must examine the proximity to the applicant's reservation.

Once an applicant has submitted sufficient information, the BIA mails notification letters to the state, county, and municipal governments having regulatory jurisdiction over the land, and requests written comments on the proposed acquisition. Prior to making a decision on each discretionary acquisition, the Department must evaluate the application pursuant to each of the factors identified in the regulations at 25 CFR § 151.10 (on-reservation) and 25 C.F.R. § 151.11 (off-reservation). One of the eight (8) factors considered is the applicant's need of for additional land.

The BIA must also comply with the requirements of the National Environmental Policy Act (NEPA) and Departmental environmental review requirements in making its determination. The NEPA requires the BIA to disclose and analyze potential environmental impacts of taking land in trust and, depending on the type of NEPA review required, may affords the public an opportunity to review and provide comments on those impacts.

In November 2013, the Department published new regulations governing decisions by the Secretary to approve or deny applications to acquire land in trust. Fee-to-trust decisions are subject to administrative and judicial review under the Administrative Procedures Act.

A lot of misinformation has been repeated about this fee-to-trust process. It is a lengthy and time-consuming process in which many applications fail. Formal disapproval is rare because applicants often withdraw an application if the standards cannot be met. Moreover, many applications languish for years as the applicant and the BIA seek to address issues that arise in BIA review or public comment.

Trust Modernization Through Implementation of the Land Buy-Back Program

The mistakes made by Congress and the Federal Government in the Allotment Era are very difficult to rectify today. The Land Buy-Back Program for Tribal Nations (Buy-Back Program) is an important initiative designed to alleviate the impacts of fractionation and expand tribal sovereignty. For example, the Buy-Back Program has transferred the equivalent of more than 270,000 acres of land to the Oglala Sioux Tribe. In the short term, much of the money paid to obtain the interests will be spent in tribal communities. In the long-term, transferring millions of acres of land to tribes will ultimately strengthen each tribal community and generate economic benefits to those communities. Tribal acquisition of fractionated lands will "unlock" those lands for tribes, making them available to support economic development to benefit tribal members.

The *Cobell* Settlement became final on November 24, 2012. Since then, we have engaged in government-to-government consultation on our plans for implementa-

tion—with consultations in Minneapolis (January 2013); Rapid City (February 2013); Seattle (February 2013)—and held numerous meetings with tribes and intertribal organizations.

We continue working diligently to implement the Buy-Back Program. Since November 24, 2012, we have:

- Sent offers to more than 86,000 landowners exceeding $1.5 billion.
- Transferred land to tribal trust ownership for 18 tribes, totaling nearly 900,000 acres through purchases from willing sellers.
- Paid over half a billion dollars to Indian landowners across the United States.
- Entered into cooperative agreements with at least 20 tribes
- Hired 59 full-time employees and expended approximately $29 million of the overall implementation/administrative portion of the fund; some of these expenditures included one-time, up-front costs, such as the Trust Commission, mapping, and equipment.

Land-Buy-Back Program: Lessons Learned

The Buy-Back Program is an effort of significant scope and complexity, which has great importance to Indian Country. No effort this massive and complex could proceed without mistakes and course corrections. However, as we continue to implement the Buy-Back Program, we have incorporated lessons learned, best practices, and tribal feedback to enhance the overall effectiveness of the Program's implementation strategy. We have heard from tribes on a number of issues, including the cooperative agreement process, scheduling, and reporting on both the expenditure of administrative costs and the acceptance of offers on reservations. Many features of the Buy-Back Program have come as a direct result of tribal consultation and informal feedback from tribal leaders, such as the need for a minimum base payment to sellers and provision of indirect costs.

The Land Buy-Back Program is an important step in trust modernization which seeks, in some ways, to turn back the clock on the allotment era.

Trust Modernization in the Fee-to-Trust Regulations for Alaska

Section 5 of the Indian Reorganization Act (IRA), as amended, authorizes the Secretary of the Interior (Secretary) to acquire land in trust for individual Indians and Indian tribes in the continental United States and Alaska. 25 U.S.C. 465; 25 U.S.C. 473a. For several decades, the Department's regulations at 25 CFR part 151, which establish the process for taking land into trust, have included a provision stating that the regulations in part 151 do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members (the "Alaska Exception"). 25 CFR 151.1. The Department, just over half a year ago, finalized a rule deleting the Alaska Exception, thereby allowing applications for land to be taken into trust in Alaska to proceed under the part 151 regulations. The Department retains its usual discretion to grant or deny land-into-trust applications and makes its decisions on a case-by-case basis in accordance with the requirements of part 151 and the IRA.

As noted above, Section 5 of the IRA authorizes the Secretary, in her discretion, to acquire land in trust for Indian tribes and individual Indians. 25 U.S.C. 465; Cohen's Handbook on Federal Indian Law section 15.07[1][a], at 1030 (2012 ed.). In 1936, Congress expressly extended Section 5 and other provisions of the IRA to the Territory of Alaska. Act of May 1, 1936, Public Law 74–538, section 1, 49 Stat. 1250 (codified at 25 U.S.C. 473a).

Thirty-five years later, in 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203, 85 Stat. 688 (codified as amended at 43 U.S.C. 1601 et seq.), "a comprehensive statute designed to settle all land claims by Alaska Natives." *Alaska v. Native Village of Venetie Tribal Government,* 522 U.S. 520, 523 (1998). The Act revoked all but one of the existing Native reserves, repealed the authority for new allotment applications, and set forth a broad declaration of policy to settle land claims. See 43 U.S.C. 1618(a), 1617(d), and 1601(b). However, the statutory text of ANCSA did not revoke the Secretary's authority, under Section 5 of the IRA as extended by the 1936 amendment, to take land into trust in Alaska.

A number of recent developments, including a pending lawsuit, caused the Department to look carefully at its policy on land into trust in Alaska. See *Akiachak Native Cmty v. Salazar,* 935 F. Supp. 2d 195 (D.D.C. 2013). Most significantly, the Indian Law and Order Commission, formed by Congress to investigate criminal justice systems in Indian Country, brought to light the shocking and dire state of public safety in Alaska Native communities and made specific recommendations to address these challenges. Indian Law and Order Commission, "A Roadmap For Mak-

ing Native America Safer: Report to the President and Congress of the United States," at 33–61 (November 2013). The Commission's report expressly acknowledged that "a number of strong arguments can be made that [Alaska fee] land may be taken into trust and treated as Indian country" and "[n]othing in ANCSA expressly barred the treatment of former [Alaska] reservation and other Tribal fee lands as Indian country." Id. at 45, 52. Moreover, the Commission recommended allowing these lands to be placed in trust for Alaska Natives. See id. at 51–55. Likewise, the Secretarial Commission on Indian Trust Administration and Reform was established by former Secretary of the Interior Ken Salazar to evaluate the existing management and administration of the trust administration system, as well as review all aspects of the federal-tribal relationship. Report of the Commission on Indian Trust Administration and Reform, at 1 (Dec. 10, 2013). This Commission endorsed the earlier findings and likewise recommended allowing Alaska Native tribes to put tribally owned fee simple land into trust. Id. at 65–67.

In light of those urgent policy recommendations, the Department carefully reexamined the legal basis for the Secretary's discretionary authority to take land into trust in Alaska under Section 5 of the IRA. In particular, the Department reviewed the statutory text of ANCSA and other Federal laws and concluded that the Secretary's authority was never extinguished. Congress explicitly granted the Secretary authority to take land into trust in Alaska under the IRA and its amending legislation. Although Congress, through the enactment of ANCSA and other laws, repealed other statutory provisions relevant to Alaska Native lands, it has never passed any legislation that revokes the Secretary's authority to make trust land acquisitions in Alaska, as codified in 25 U.S.C. 473a and 25 U.S.C. 465.

In sum, ANCSA left these provisions and the Secretary's resulting land-into-trust authority in Alaska intact. Thus, the Secretary retains discretionary authority to take land into trust in Alaska under Section 5 of the IRA. Due to pending litigation, the Department is currently not engaged in taking land into trust. However, repealing the Alaska exception is an important step in trust modernization over the long term for Alaska Natives.

Trust Modernization in Surface Leasing Regulations for Indian Lands

The Department of the Interior currently holds approximately 56 million acres of land in trust for Indian tribes and individual Indians. As trustee of those lands, the Department must ensure that the lands are protected, and that they are used for the benefit of the tribes and individual Indians for whom they are held. Congress has enacted laws that require the Department to approve leases on Indian lands. The Department's regulations are intended to implement its trust responsibility under those laws.

During its first term, the Obama Administration believed it was necessary to reform the surface leasing regulations because the Department's existing regulations were originally adopted 50 years ago, and were ill-suited to the modern needs of Indian tribes and individual Indians in using their lands for housing, economic, and wind & solar energy development. When President Obama took office in 2009, the existing regulations did not impose timelines for the Department to complete its review of leases, often resulting in delays in approving leases, amendments, subleases, mortgages, and assignments. They did not make a distinction between leases for single-family residences and large business developments—meaning the Department reviewed leases under a "one-size fits all" structure. As a result, a lease for a single-family residence might take years to approve. Finally, the leasing regulations required the Department to heavily scrutinize and sometimes second-guess the judgment of Indian landowners in the development of their own lands.

The final regulations enacted by the Obama Administration, which took effect in early 2013, streamlined the leasing process by imposing timelines on the Department for reviewing leases: up to 30 days for residential leases, and up to 60 days for business leases and wind & solar energy leases. The new regulations distinguish between residential, business, and wind & solar energy leases, and establish separate processes for review. They also permit the automatic approval of subleases and amendments to existing leases if the Department fails to act within the review timeframe. The new regulations eliminate the requirement for Department approval of "permits" for activities on Indian lands, and defer to the judgment of tribes and individual Indians on land use (and rental rates) in most instances. The regulations establish a new, streamlined process for the development of wind & solar energy projects on Indian lands.

Another important aspect of the new leasing regulations is that they seek to address the troubling problem of dual taxation of reservation economic activity, which discourages (or inhibits) economic development. Leases approved by the BIA carry a federal pre-emption of state taxation of activities conducted under the lease.

The Department anticipates that the regulations will increase homeownership on Indian lands, by streamlining the process for the approval of leases, subleases, and mortgages. The regulations also streamline leasing for small businesses and commercial developments on Indian lands, promoting private investment in businesses in Indian communities. By establishing a streamlined process for wind & solar energy resource assessment and development, the regulations remove significant obstacles to wind & solar energy development on Indian lands. Finally, by addressing the dual taxation, the regulations foster (or promote) a friendlier business environment on tribal lands so that tribes will be able to attract economic development.

These regulations are an important part of a broader agenda to reform and improve the management of Indian lands across the United States. The Department's regulations govern the process of how it reviews and approves leases on Indian lands. The regulations overhaul a process that was antiquated and ill-suited for modern development needs on Indian lands.

Trust Modernization in Tribal Leasing Laws Under the HEARTH Act

The Department worked closely with both houses of Congress to support passage of the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act in 2012. Under the HEARTH Act, tribes may choose to develop their own leasing regulations to implement their own leasing programs. The HEARTH Act and our newly revised leasing regulations each provide tribes with greater control over leasing of their land. The Department has worked diligently to implement the HEARTH Act in the spirit of tribal self-determination by encouraging the development and submission of Tribal HEARTH Act laws. The Department has approved such laws for 20 tribes, empowering each of these tribes to exercise greater control of its economic destiny.

The HEARTH Act of 2012 (the Act) makes a voluntary, alternative land leasing process available to tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department's own leasing regulations at 25 CFR Part 162 and provide for an environmental review process that meets requirements set forth in the Act.

As the Department explained in the preamble to the updated final leasing regulations, the Federal government has a strong interest in promoting economic development, self-determination, and tribal sovereignty on tribal lands. 77 FR 72,440, 72,447–48 (December 5, 2012). Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)). In addition, as explained in the preamble to the revised leasing regulations at 25 C.F.R. Part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The Bracker balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and tribal interests.

While that discussion occurred in the context of federal lease approvals, the strong Federal and tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [tribes] to approve leases quickly and efficiently." Id. at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community,* 134 S. Ct.

2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. See id. at 2043–44 (finding that State and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede tribal economic growth).

Just like BIA's surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of surface leasing. See Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM–TRUS–29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed tribal regulations with Part 162 regulations and listing required tribal regulatory provisions). Furthermore, the Federal Government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to the Part 162 regulations. For these reasons, we have adopted the Bracker analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, in the context of the HEARTH Act.

In sum, the Federal and tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations or Part 162. We have published notice of each HEARTH Act approval in the Federal Register so that state and local taxation authorities and the public will be aware of the preemption of taxation of business activity under approved tribal leasing regulations.

As of July 3, 2015, the following tribes have HEARTH Act approval of their tribal leasing regulations:

- February 1, 2013 HEARTH Act Approval of Federated Indians of Graton Rancheria business leasing regulations
- March 14, 2013 HEARTH Act Approval of Pueblo of Sandia business leasing regulations
- April 11, 2013 HEARTH Act Approval of Pokagon Band of Potawatomi Indians residential leasing regulations
- November 10, 2013 HEARTH Act Approval of Ak-Chin Indian Community business leasing regulations
- November 10, 2013 HEARTH Act Approval of Santa Rosa Band of Cahuilla Indians business leasing regulations
- November 10, 2013 HEARTH Act Approval of Citizen Potawatomi Nation business leasing regulations
- December 10, 2013 HEARTH Act Approval of Ewiiaapaayp Band of Kumeyaay Indians business leasing regulations
- December 13, 2013 HEARTH Act Approval of Kaw Nation business leasing regulations
- April 4, 2014 HEARTH Act Approval of Jamestown S'Klallam Tribe business leasing regulations
- April 4, 2014 HEARTH Act Approval of Dry Creek Rancheria Band of Pomo Indians business leasing regulations
- April 8, 2014 HEARTH Act Approval of Wichita and Affiliated Tribes business leasing regulations
- April 8, 2014 HEARTH Act Approval of Mohegan Tribe of Indians of Connecticut business leasing regulations
- September 23, 2014 HEARTH Act Approval of Agua Caliente Band of Cahuilla Indians business leasing regulations
- January 8, 2015 HEARTH Act approval of Seminole Tribe of Florida business and residential ordinances
- January 22, 2015 HEARTH Act Approval of Cowlitz Indian Tribe business leasing regulations

- January 28, 2015 HEARTH Act Approval of Oneida Indian Nation business leasing regulations
- February 4, 2015 HEARTH Act Approval of Ho-Chunk Nation business, residential and agricultural leasing regulations
- June 3, 2015 HEARTH Act Approval of Absentee Shawnee Tribe of Oklahoma business leasing regulations
- June 4, 2015 HEARTH Act Approval of Rincon Band of Luiseno Mission Indians business leasing regulations

Trust Modernization in Rights-of-Way Regulations for Indian Lands

The current regulations governing rights-of-way across Indian land were promulgated more than 40 years ago and last updated more than 30 years ago. As such, they are ill-suited to the modern requirements for rights-of-way and the need for faster timelines and a more modern and transparent processes for BIA approval. The Department proposed changes to the current rights-of-way regulations about a year ago and we extended the comment period multiple times for a comment period that lasted more than five months. We are in the final stages of reviewing the comments submitted under the extended comment period noticed in the Federal Register on November 4. During the public comment period, we received approximately 175 comment submissions on the proposed rule and hosted four Tribal consultation sessions.

This proposed rule would update 25 CFR 169, Rights-of-Way on Indian Land, to streamline the process for obtaining BIA approval and ensure seamless consistency with the recently promulgated leasing regulations. The proposed rule would increase the efficiency and transparency of the BIA approval process, increase flexibility in compensation and valuations, and support landowner decisions regarding the use of their own trust land.

The proposed rule would change the BIA approval process for rights-of-way to:

- Eliminate the requirement for applicants to obtain BIA approval to access Indian land to survey it in preparation for a right-of-way application;
- Specify the process for obtaining BIA approval of rights-of-way documents on Indian land;
- Impose time limits on BIA to act on submitted rights-of-way documents;
- Establish that BIA must approve right-of-way documents absent compelling justifications otherwise; and
- Clarify that BIA approvals of rights-of-way documents are effective on the date of approval, even if an administrative appeal is filed.

The proposed rule would require BIA to issue a decision on a right-of-way grant within 60 days of receiving an application and would require BIA to issue a decision on an amendment, assignment or mortgage of a right-of-way within 30 days of receiving an application. The proposed rule would also add an administrative process so that if BIA fails to meet these timelines, the applicant may elevate the matter to the BIA Regional Director, then the BIA Director.

The proposed rule would provide a different approach to compensation depending on whether the land is tribal land or individually-owned Indian land.

- For rights-of-way on tribal land: Compensation may be in any amount the tribe negotiates, or may be an alternative form of rental, such as in-kind consideration, and BIA will not require a valuation, as long as the tribe provides documentation that the tribe has determined the compensation is in its best interest. The BIA will not require a periodic review of the adequacy of the compensation for rights-of-way on tribal land.
- For rights-of-way on individually-owned Indian land: Compensation must be at least as high as fair market rental unless the landowners execute a written waiver and BIA determines the waiver to be in the landowners' best interest. The BIA will also require a valuation, unless all the landowners execute a written waiver or the grantee will construct infrastructure improvements on, or serving, the premises and BIA determines it is in the best interest of all landowners. In addition, if BIA determines it is in the Indian landowners' best interest, then the grant may provide for alternative forms of rental or varying types of compensation. No periodic review of the adequacy of rent or rental adjustment is required if payment is a one-time lump sum, the right-of-way duration is five years or less, the grant provides for automatic adjustments, or BIA determines it is in the best interest of the landowners not to require a review or automatic adjustment.

The proposed rule would make the following change to compliance with and enforcement of rights-of-way:

- Restrict BIA's right of entry to reasonable times and upon reasonable notice, consistent with notice requirements under applicable tribal law and right-of-way documents;
- Provide that, in the event of a violation, BIA will defer to ongoing actions or proceedings provided for in the right-of-way grant's negotiated remedies, as appropriate;
- Provide that BIA will provide a copy of the notice of violation to the tribe for tribal land, and will provide constructive notice to Indian landowners for individually owned Indian land;
- Require BIA to consult with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, to determine what action to take if the grantee does not cure a violation within the requisite time period.

The proposed rule would also make the following changes:

- Eliminate outdated requirements specific to different types of rights-of-way;
- Clarify that a right-of-way grant on Indian land may include provisions requiring the grantee to give a preference to qualified tribal members, based on their political affiliation with the tribe;
- Clarify which laws and taxes apply to rights-of-way approved under 25 CFR 169;
- Add that a bond is required to be provided with the application, rather than a deposit; and
- Clarify when a BIA grant of a new right-of-way on Indian land is required or an existing right-of-way may be amended.

Conclusion

The Obama Administration has developed a strong legacy of trust modernization in major efforts to correct historical mistakes in allotment and provide tribes significant land bases upon which they exercise sovereignty. It has also modernized land leasing by the BIA, and with the help of Congress, land leasing regulated by tribes. It has also eliminated dual taxation in these contexts, a major step for trust modernization. Finally, it has worked to update its right-of-way regulations. Still, much work remains to be done in the Executive branch, in reforming programs and services affecting Indian tribes, and in Congress, in enacting a *Carcieri* fix.

We will continue to work with Members of this Committee, Congress, and our trust beneficiaries, the tribes, to clarify and fulfill our trust obligation, through our existing authorities to acquire land in trust on behalf of all tribes, and to discharge our responsibilities in accordance with the law and our regulations.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

The CHAIRMAN. Vice Chairman Stensgar, please proceed.

STATEMENT OF HON. ERNEST L. STENSGAR, VICE CHAIRMAN, COEUR D'ALENE TRIBE

Mr. STENSGAR. Thank you, Chairman Barrasso, Senator Tester, members of the Committee.

I think Senator Crapo read the bill to you, and you will understand that. I want to state the tribe's position and the position of the Affiliated Tribes of Northwest Indians. I can speak on behalf of the Affiliated Tribes because I chair the trust reform committee. I have testimony from most of our tribal members regarding S. 383 and the companion House bill.

Senators, we are tired of the paternalism of the United States Government in managing our affairs. We have day-to-day, most of the tribes have day-to-day operations. We manage million dollar businesses, we don't ask anybody's permission as we conduct those businesses. Yet if we want to deal with any timber management or

agricultural management, we have to get permission from Interior to make management decisions.

This bill would allow us to make those decisions without going to Interior, similar to the HEARTH Act. We see the tribes that have utilized the HEARTH Act and recognize the success that they have.

Our feeling is that it would be more important for us to make decisions and faster if we could do away with the paternalistic views of the United States Interior Department.

Part of this bill talks about OST. We recognize the management functions of OST in the finances of the trust dollars. But we are concerned with the duplication of going to the Bureau of Indian Affairs and the Office of Special trustee when we are looking at appraisals or any land transactions. We may have a venture in progress and all of a sudden we come to a dead stop while we untangled who is responsible, and whose signature we need to carry on that business. It is very difficult, to say the least.

We look forward to OST's response, I think to the committee, the Appropriations Committee and to how the OST is going to operate in the future and how they are going to sunset their abilities in the future, or if they are not going to do it, how are they going to continue on with support of the tribes and Congress. Hopefully it comes forth very soon.

Again, Senator Crapo read the bill, and I just want to stand for questions. Thank you for this time.

[The prepared statement of Mr. Stensgar follows:]

PREPARED STATEMENT OF HON. ERNEST L. STENSGAR, VICE-CHAIRMAN, COEUR D'ALENE TRIBE

My name is Ernest Stensgar and I am testifying today in my capacity as Vice-Chairman of the Coeur d'Alene Tribe and on behalf of the Affiliated Tribes of Northwest Indians (ATNI) as Chair of ATNI's Trust Reform Committee. I am pleased to provide ATNI's and my Tribe's strong support for S. 383 and urge the Committee to advance this legislation without delay.

Background On ATNI and the Development of S. 383

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California and Montana. For more than a decade, ATNI and its member tribes in the Pacific Northwest have been active proponents of forward-looking trust reform. ATNI's support and interest in these issues has been and is grounded in our commitment to maintaining the integrity of the United States' trust responsibility, the foundation of which is based upon the historical cession of millions of acres of ancestral lands by these tribes to the United States. It is also based on our recognition that in nearly every instance, Indian tribes have demonstrated that they are simply much better managers of their natural resources and affairs than is the Federal Government.

Much of the text of S. 383 had its origins in S. 1439, which was introduced by then-Committee Chairman McCain and Vice-Chairman Dorgan in the 109th Congress. Following introduction, the Committee staff travelled across the United States to consult with Indian tribes on the legislation. The Committee then generated a revised version of S. 1439 to reflect the tribes' input. Using the committees' revised draft of S. 1439 as a template, beginning in 2011 ATNI focused on updating the two titles of that bill that remained relevant in light of the *Cobell* settlement and that had universal tribal support: the Indian Trust Asset Demonstration Project and Restructuring the Office of the Special Trustee (OST). Several individuals and tribal leaders who participated in developing the bill had previous careers working for the Bureau of Indian Affairs (BIA) and OST and were able to provide important practical input to guide our efforts.

In the 113th Congress, this Committee heard testimony on a prior version of this legislation (S. 165) at a July 16, 2014, oversight hearing. The House Subcommittee

on Indian, Insular, and Alaska Native Affairs held legislative hearings on the House bill in the 113th Congress (H.R. 409) and, in the current Congress, on H.R. 812 on April 14, 2015.

As introduced, S. 383 and H.R. 812 incorporate a number of changes to reflect the Obama Administration's feedback. Since the April 2015 House hearing on H.R 812, we have had productive discussions with Department officials on further revisions to the bill to address outstanding issues. On June 28, 2015, the National Congress of American Indians convened a meeting at its 2015 mid-year conference with OST and tribal leaders and tribal representatives to discuss the future of OST and this legislation. That meeting has generated additional discussions with the Department on the bill, specifically title III.

Based on these ongoing discussions, we are hopeful and optimistic that we will reach common ground with the Administration on this important legislation.

Overview of S. 383

The substantive provisions of S. 383 are in titles II and III, which are discussed below:

Title II: Indian Trust Asset Demonstration Project

Title II of S. 383 would establish a demonstration project to authorize Indian tribes, on a voluntary basis, to direct the management of their trust resources through negotiated agreements with the Secretary of the Interior ("Secretary"). To participate, tribes would submit to the Secretary a proposed Indian trust asset management plan that would describe, among other criteria, the trust assets that would be subject to the plan, the tribe's management objectives and priorities for assets subject to the plan, and a proposed allocation of funding for the proposed management activities.

Unlike existing legal authorities that authorize tribes to contract or compact federal functions under federal standards, this demonstration project is unique in that it would provide participating tribes the freedom to determine how their resources will be managed under tribal standards.

For example, an Indian tribe with timber resources that seeks to participate in the demonstration project could submit a plan that would direct that some of its forest land be managed in a manner to maximize fair market value on timber sales. The plan might also direct that other forested acreage not be harvested at all to encourage tourism or promote certain wildlife habitat. Currently, the BIA is the final decision-maker on these issues. If S. 383 is enacted into law, Indian tribes for the first time would have the flexibility to dictate these management standards under this demonstration project authority.

S. 383 also includes a new section 204(e) that authorizes the Secretary to approve trust asset management plans that include provisions authorizing Indian tribes to carry out surface leasing or forest management activities without BIA approval under certain conditions. This concept is substantively identical to the HEARTH Act, which was signed into law in 2012. The Administration has been a strong supporter of the HEARTH Act concept of authorizing tribes to voluntarily carry out surface leasing activities without BIA approval, and that model has proven very successful.

Empowering tribes to create value with their own resources epitomizes the federal policy of self-determination. In an era where federal appropriations for management of tribal natural resources are declining and represent a fraction of the actual need, this demonstration project is a practical tool that tribes will utilize immediately if they so choose.

Title III: Restructuring of the Office of the Special Trustee

Congress created the OST in 1994 when it enacted the American Indian Trust Fund Management Reform Act. Congress recognized that OST would be a temporary entity to oversee certain reforms of how the Department of the Interior (DOI) managed and invested Indian trust funds. The 1994 Act provided that OST would be headed by the Special Trustee for American Indians, a position appointed by the President and confirmed by the Senate.

Since the establishment of OST, management of Indian trust assets in DOI has been bifurcated: the BIA manages Indian trust land and non-monetary trust resources, while OST manages Indian trust funds. Although both entities are within DOI, they are completely separate bureaucracies. Even though their work often overlaps, OST employees do not have authority over BIA employees, and vice versa. Prior to OST's creation, management of trust land and trust funds was under a single administrative umbrella.

The major reforms that OST was charged with implementing were completed years ago. In a 2007 report, the General Accountability Office noted that "OST esti-

mates that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services will be completed by November 2007."[1] Those reforms, have undoubtedly improved the Secretary's management of Indian trust funds. We believe that those functions should continue. However, since OST was established, its role has expanded significantly to include activities far beyond managing Indian trust funds and implementing financial reforms, creating additional unintended bureaucracy for Indian Tribes.

For example, in 2002 OST assumed responsibility for appraising Indian trust land and trust property, even though this function has nothing to do with the management of Indian trust funds. In the report accompanying the FY 2010 Interior, Environment and Related Agencies spending bill, the House Appropriations Committee said the following about OST's involvement in the appraisal process:

> Indian Tribes routinely experience lengthy delays in obtaining appraisals from the Department for transactions involving the conveyance of Indian trust lands. The Bureau of Indian Affairs is responsible for requesting appraisals and the Office of the Special Trustee is responsible for procuring the appraisals. Appraisals are required for Indian Tribes and individual Indians to sell, acquire or exchange interests in trust land. Delays in obtaining appraisals also delay these transactions, which negatively impacts Tribal economies.

It is easy to see how involving two competing bureaucracies with no authority over each other and little coordination leads to delays in effectuating routine transactions like appraisals. As this Committee is aware from its work on tribal energy development, delays in securing federal approvals and permits and—in this case—appraisals, often result in lost economic opportunities for Indian tribes and their members.

Report to Congress

S. 165 in the 113th Congress would have terminated OST by a date certain, which appeared to be the Administration's primary concern with the bill. We have addressed this issue by taking a different approach in S. 383. Instead of mandating the termination of OST, Section 304 of S. 383 now directs the Secretary to prepare a report that (a) identifies functions that OST performs that relate to management of non-monetary trust resources; (b) describes any OST functions that will be transitioned to other bureaus or agencies within the Department, and (c) includes a transition plan and timetable for the termination of OST to occur not later than 2 years after the date of the report. In preparing the report, the Secretary would consult with Indian tribes and, once complete, submit it to the authorizing and appropriations committees in both chambers.

S. 383 does not require the Secretary to implement the report or the transition plan. What actions might be taken as a result of the report, if any, would be questions for a future Administration or a future Congress. This report would serve several purposes, however. First, it would provide OST with an opportunity to educate Indian country about the work that it does. Second, it would provide Congress with information about possibly duplicative land management functions that OST performs that the BIA might also perform. Finally, it would be the first opportunity for Congress and Indian country to see what the Secretary's own plan to transition OST would look like.

The 1994 Act that created OST contemplated that the Special Trustee, upon implementation of reforms, would certify the reforms have been implemented and wind down the office in accordance with Congress's recognition that the Special Trustee is a temporary position. These major reforms were implemented years ago but for whatever reason, no Special Trustee since has taken steps to transition the Office. We believe that the report required by Section 304 is an eminently reasonable way of advancing this dialogue with Indian country and the Congress.

S. 383 also includes two new provisions that will provide all tribes, on a voluntary basis, with new management tools and flexibility:

Fiduciary Trust Officers

Section 304(b) would authorize tribes to contract or compact the Fiduciary Trust Officer (FTO) positions within OST under the Indian Self-Determination and Education Assistance Act of 1975. OST created the FTO positions in 2003 to serve as a resource to BIA agency personnel. On some reservations, FTOs are either underutilized or not utilized at all. Allowing tribes the ability to contract and make better

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[1] *See The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain,* GAO–07–104 (Dec. 2006).

use of these positions under P.L. 93–638 would provide tribes with additional staffing capacity in an era of declining BIA personnel and budgets.

Appraisals and Valuations

The other new provision is section 305, which addresses appraisals and valuations. Appraisals or valuations are required to complete most transactions involving trust land or trust resources. As mentioned above, both the BIA and OST have a role in the appraisal process and neither have authority over the other. As a result, the bureaucracy of having two separate entities involved in accomplishing a single task often leads to lengthy delays. Section 305(a) requires the Secretary, within 18 months of enactment and in consultation with Indian tribes, to ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency or other administrative entity within the Department.

Furthermore, Sections 305(b) and (c) would direct the Secretary to establish minimum qualifications for persons to prepare appraisals and valuations of Indian trust property and publish those qualifications in the *Federal Register*. When an Indian tribe or Indian beneficiary submits an appraisal or valuation to the Secretary that satisfies those qualifications and the submission acknowledges the tribe's or beneficiary's intent to have the appraisal or valuation considered under this new subsection, the appraisal or valuation will not require any further Secretarial review or approval and will be considered final for purposes of effectuating the applicable transaction.

Section 305 would also offer tribes and beneficiaries the option to hire their own qualified appraisers and complete transactions in far less time than would be required if the Department had to review and approve the appraisal or valuation. Not only will this expedite transactions involving trust assets, it will also relieve the Department of administrative burdens and will likely result in cost savings.

ATNI and the Coeur d'Alene Tribe are grateful for the Committee holding today's hearing. We look forward to working with the Committee to advance S. 383 as quickly as possible.

The CHAIRMAN. Thank you so much for your testimony. Your complete written testimony will be included in the formal record. We will get to questions in a few minutes.

At this point I would like to call on Councilwoman Lintinger. Thank you very much for being here.

STATEMENT OF HON. BRENDA LINTINGER, COUNCILWOMAN, TUNICA–BILOXI TRIBE OF LOUISIANA; SECRETARY, UNITED SOUTH AND EASTERN TRIBES

Ms. LINTINGER. Thank you. Can I have his extra minute and a half?

[Laughter.]

Ms. LINTINGER. [Greeting in native tongue.] Greetings and good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee. Thank you for the opportunity to provide testimony regarding trust modernization and reform for Indian lands.

My name is Brenda Lintinger, and I am the Secretary for the United South and Eastern Tribes, a non-profit inter-tribal organization representing 26 federally-recognized Indian tribes from Texas across to Florida and up through the State of Maine. Since 1997, I have served on the tribal council for the Tunica-Biloxi people in Louisiana.

USET is supportive of Senate Bill 383, the Indian Trust Asset Reform Act, especially with regard to its intent to improve the administration of trust assets in a manner consistent with tribal input. This legislation also provides an important opportunity for this Committee to begin to examine ways in which the unique trust relationship between tribal nations and the Federal Government may be modernized and strengthened in a much broader sense.

The current trust model is based on two deeply flawed and paternalistic assumptions. First, that tribes are incompetent to handle their own affairs, and secondly, that tribal nations would eventually disappear. Indian Country has proven both of these assumptions wrong over and over again.

The time is now to revisit our sacred nation-to-nation relationship in order to remove existing barriers which in turn will allow Indian Country to realize its greatest potential. Today is the 45th anniversary of President Nixon's special message to Congress on Indian affairs, recognizing the inherent sovereign authority of tribal nations and initiating a historic, successful era of tribal self-determination and self-governance.

After 45 years under this model, tribal nations across the United States seek to advance to the next level and are calling for a new paradigm in the trust relationship. Tribes and tribal organizations representing various regions and interests and perspectives from across Indian Country, including USET, have developed a set of five principles for modernizing and strengthening our nation-to-nation trust relationship.

First, strengthen trust standards, adopt implementing laws and regulations. Over the course of our Nation's history, the Federal Government has issued numerous policy statements and secretarial orders recognizing the Federal trust responsibility and affirming its own obligation to tribes. The codification of these standards via legislation and regulation is necessary to ensure that these statements are meaningful and enforceable.

Second, strengthen tribal sovereignty, empower each tribe to define its path. Thirdly, strengthen Federal management for trust assets still subject to Federal control.

Fourth, strengthen Federal-tribal relations, one table with two chairs. The United States must commit to meeting tribes on equal footing and incorporating the guidance of tribes into policy decisions. Fifth, strengthen Federal funding and improve its efficiency as a pillar of the trust obligation.

As this Committee well knows, the U.S. cannot fully deliver on its trust obligation to tribes without full funding for that obligation. Also, funding for tribal programs should not be subject to the annual appropriations process, but rather be provided via mandatory entitlement funding.

In addition to these principles, USET would like to focus on the latter part of the title of this hearing, Reform for Indian Lands. The ability of tribes to have land taken into trust is central to both tribal sovereignty and the Federal trust responsibility. Every tribe has its own history of loss, and every federally-recognized tribe once held title to large amounts of land.

In 1803, my tribe, the Tunica-Biloxi Tribe in Louisiana, held title to over 50 square miles of land, some of which was confirmed by the Louisiana Purchase. However, by 1980, the tribe controlled less than 200 acres. The Tunica-Biloxi Tribe and hundreds of other tribes across the country are utilizing their own resources to buy back their own land.

We have forged positive relationships with the local non-Indian communities that have grown up around us. Our tribal businesses generate revenue for governmental services and also provide bene-

fits for our non-Indian neighbors. Our tribe employs nearly 1,500 people, the vast majority of them non-Indian. After our gaming facility opened in 1995, the direct and indirect jobs created by our tribe caused the unemployment rate in Avoyelles Parish to drop from 15 to 6 percent.

The Supreme Court's misguided decision on *Carcieri v. Salazar* has thrown Indian Country into chaos, effectively creating two classes of tribes, those who can take land into trust and those who cannot. For six years now we have been seeking legislative relief that returns us to the status quo by reaffirming way of finding the status of lands currently held in trust for tribes and confirming the Secretary's ability to take future lands into trust for all tribes.

It is impossible to have any conversation about modernizing the trust responsibility without first ensuring that the Federal Government's obligations equally apply to all tribes, including the ability of all tribal nations to restore their tribal homelands as intended by the 1934 Indian Reorganization Act.

In conclusion, the time has come for a comprehensive overhaul of our nation-to-nation trust relationship. As this Committee, this Congress and this Administration consider opportunities to provide these necessary changes, USET stands ready to provide guidance and partnership.

I thank you and invite any questions the Committee may have. I did pretty good.

[The prepared statement of Ms. Lintinger follows:]

PREPARED STATEMENT OF HON. BRENDA LINTINGER, COUNCILWOMAN, TUNICA-BILOXI TRIBE OF LOUISIANA; SECRETARY, UNITED SOUTH AND EASTERN TRIBES

Chairman Barrasso, Vice Chairman Tester and members of the Committee, thank you for the opportunity to provide testimony regarding "Trust Modernization and Reform for Indian Lands." My name is Brenda Lintinger, and I am the Secretary for United South and Eastern Tribes (USET), a non-profit, inter-Tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine.[1] Since 1997, I have served on the Tribal Council for the Tunica-Biloxi Tribe.

USET is supportive of S. 383, *the Indian Trust Asset Reform Act,* especially with regard to its intent to improve the administration of trust assets in a manner consistent with Tribal input. However, we would defer to those most directly affected for a discussion of its specific provisions. This legislation also provides an important opportunity for this Committee to begin to examine ways in which the unique trust relationship between Tribal Nations and the Federal Government may be modernized and strengthened in a much broader sense. Reforming the Federal Government's management of Tribal trust assets is an integral part to modernizing the trust relationship. Additionally, USET urges the Committee to consider this hearing the first in a more comprehensive exploration of the current state of the Tribal-U.S. trust relationship and opportunities for systemic change.

The current trust model is a remnant of an era and mindset that has no place in current Nation-to-Nation relations, as it is based on two deeply flawed and paternalistic assumptions: (1) that Tribes are incompetent to handle their own affairs,

[1] USET member Tribes include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

and (2) that Tribal Nations would eventually disappear. Indian Country has proven both of these assumptions wrong over and over again. The time is now to revisit and redefine our sacred Nation-to-Nation relationship in order to remove existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential. Strong, vibrant Tribal Nations are a benefit to their surrounding communities and, indeed, make the United States a greater and stronger nation. Indian Country seeks to work with this Committee, the full Congress and the Executive branch to build a new framework for Tribal-Federal relations that provides Tribes with an equal say in the defining of that relationship, instead of it almost entirely being defined by the Federal Government.

Today is the 45th anniversary of President Nixon's Special Message to Congress on Indian Affairs, recognizing the inherent sovereignty of Tribal Nations and initiating a historic, successful era of Tribal Self-Determination and Self-Governance. After 45 years under this model, Tribal Nations across the United States seek to advance to the next level and are calling for a new paradigm in the trust relationship. It is time to establish a trust model that reflects a true nation-to-nation partnership built upon diplomacy that will strengthen federal trust administration, enhance federal-tribal relations, and promote and protect tribal sovereignty, all with the goal of building and sustaining prosperous tribal communities.

To that end, Tribes and Tribal Organizations representing various regions and interests and perspectives from across Indian Country, including USET, have come together to synthesize various trust modernization concepts and plans. Together, we have developed a set of five principles for modernizing and strengthening the trust relationship. The following principles identify many, if not most, of the challenges and principles relative to the nature and evolution of the federal-tribal trust relationship, and are designed to guide legislative and executive branches in their efforts to redefine this relationship.

Strengthen Trust Standards—Adopt Implementing Laws and Regulations

Over the course of our nation's history with Tribes, the Federal Government has issued numerous policy statements and secretarial orders recognizing the federal trust responsibility and affirming its own obligation to Tribes. These include President Nixon's Special Message and Secretarial Orders from Secretaries of the Interior Bruce Babbitt and Sally Jewell, as well as a report from the Department of the Interior's Secretarial Commission on Indian Trust Administration and Reform. These policy statements serve to provide principles for the execution of the trust relationship, but do not carry the weight of law and may be abandoned by subsequent Administrations and Congresses.

The codification of these standards is necessary to ensure that these statements are meaningful. Additionally, current and future Administrations should consult with Tribal Nations leading to the promulgation of enforceable regulations that uphold the trust responsibility. Similarly, Congress should seek to recognize this relationship via legislation.

Strengthen Tribal Sovereignty—Empower Each Tribe to Define its Path

As we reexamine the relationship between two sovereigns, we must consider the sovereign status of Tribes more fully. Among Tribal Nations there is a wide range of sovereign authority, with some Tribes exercising substantial (although not total) sovereign powers over their lands and peoples, while others operate with an authority that is more like a municipal government, subject to substantial state control and dominance. Even for those Tribes that exercise the maximum amount of Tribal sovereignty, that sovereignty is limited compared to the authority of other sovereigns, such as the federal and state governments.

True recognition of Tribal Nation sovereignty involves empowering each Tribal Nation to determine its own path. In USET's view, the exercise of sovereignty goes beyond self-governance contracting and compacting and beyond jurisdiction over one's own citizens. Tribes must have the opportunity to choose to assume complete control over their own affairs and assets. This includes the ability to use and reprogram federal dollars in whatever manner the Tribe determines is best, exclusive authority to tax within reservation boundaries, and full legal jurisdictional authority over all individuals and entities within those boundaries.

Strengthen Federal Management—For Trust Assets Still Subject to Federal Control

Today, a number of federal agencies implement blanket policies that affect all Indian Tribes and Indian allottees. This "one size fits all" approach ignores the unique differences between the individual Tribes and the unique government-to-government relationship each Tribe has with the United States under its own treaties and other

agreements. Unfortunately, many of these federal solutions never get changed or abolished, even when the Tribes and a federal Commission point out their shortcomings and recommend improvements.

As we seek overall improvements in the management of trust assets, S. 383, *the Indian Trust Asset Reform Act*, is a significant advance. We note that the bill confirms that the most exacting common law fiduciary standards governing private trustees also govern the Federal Government when it manages Indian Trust Assets, and that those standards are not limited to the express terms of statutes and regulations. In addition, S. 383 promotes Tribal sovereignty by establishing the Indian Trust Asset Management Demonstration Project and authorizing the contracting and compacting of trust asset management under the Indian Self-Determination and Education Assistance Act. This legislation is a positive step forward and part of what USET views as a movement toward the new trust paradigm.

Strengthen Federal-Tribal Relations—One Table with Two Chairs

Any improvement to the trust relationship must involve greater authority and a full seat at the table for Tribal Nations. While Tribal opinions are expressed via federal advisory committees, consultation, and testimony, decisions continue to be made "on our behalf", whether with or without our input. The United States must commit to meeting Tribes on equal footing and to incorporating the guidance of Tribes into policy decisions. For example, the White House Council on Native American Affairs gathers cabinet secretaries and other high level officials regularly to consider issues of importance to Indian Country. This Council has greatly raised awareness across the Federal Government to the Federal Government's trust obligation to Native peoples and represents a true advance for Native rights. However, while the Council may hear presentations from Tribal leaders, it does not count any Tribal leaders as members. The Council cannot fully consider the needs and trials of Indian Country without the full participation of Tribes.

Strengthen Federal Funding and Improve Its Efficiency—A Pillar of the Trust Responsibility

As this Committee well knows, the U.S. cannot fully deliver on its trust responsibility to Tribes without full funding for that responsibility. And yet, federal Indian programs and their administering agencies remain consistently under-funded year after year. At a minimum, the trust responsibility should provide that the Federal government has a tribally enforceable obligation to ensure that reservations are habitable by today's standards, including that they have decent schools, hospitals, public safety and infrastructure and that Tribal governments are empowered to create an environment hospitable to economic development. Further, in accordance with a recognition that the trust responsibility is an obligation and not discretionary, funding for Tribal programs should not be subject to the annual appropriations process, but rather be provided via mandatory entitlement funding.

Reform for Indian Lands—Certainty and Equality through a *Carcieri* Fix

In addition to the principles outlined above, USET would like to focus on the latter part of the title of this hearing, "Reform for Indian Lands." The ability of Tribes, working with the Secretary, to have land taken into trust is central to both Tribal sovereignty and the Federal trust responsibility. It is the foundation of Tribal efforts to strengthen our self-determination and to ensure that we protect our cultural identities.

Every Tribe has its own history of loss, and every federally-recognized Tribe once held title to large amounts of land that has been stolen from them. There are numerous stories across the country about the theft of Indian land and resources, and even of the killing of our people. In 1803, my Tribe, the Tunica Biloxi Tribe, held title to over 50 square miles of land, some of which was confirmed by the Louisiana Purchase. However, despite no approval for land transfer by the U.S. Congress in the intervening years, by 1980 the Tribe controlled less than 200 acres of land. These lands were stolen in hundreds of small ways, but one example stands out. In 1841, Chief Melacon confronted a local land owner whose work crew was moving his fence posts onto Tunica land. As the Chief began removing the fence posts the land owner shot Chief Melacon in the head in view of several other tribal citizens and non-Indians. The killer never stood trial, as the common view at the time among non-Indians in the area was that the Indians were savages who did not farm their land "properly" and therefore had no right to keep it.

Against this history of injustice, the Tunica-Biloxi Tribe, and hundreds of other Tribes across the country, are utilizing their own resources to purchase land that has been stolen from them. But, we do not wish to continue the cycle of mistrust, envy and hard feelings. Instead, we have forged new, positive relationships with the local non-Indian communities that have grown up around us. Utilizing our status

as a sovereign nation, the Tunica-Biloxi Tribe has created several economic development enterprises. These businesses generate revenue for the tribal government to protect and enhance the welfare and culture of the tribal citizens. However, they also provide major benefits for our non-Indian neighbors and revenues for state and local governments in the region.

While the population of Marksville, Louisiana has not changed much in 20 years, the Tunica-Biloxi Tribe, through its several economic development enterprises, employs nearly 1,500 people—the vast majority of them non-Indian. After our gaming facility opened in 1995, the direct and indirect jobs created by the Tribe caused the unemployment rate in Avoyelles Parish to drop to about 6 percent. Home prices increased, new roads were paved, schools improved, Parish government services expanded, and hundreds of new businesses sprung up in Marksville and across the parish. Of course, our tribal citizens who had previously suffered greatly from economic hardship were helped as well, but the full story is one of renewal for the entire region and all of our citizens and neighbors.

Today, the Tunica-Biloxi Tribe, and hundreds of other Tribal governments across the country are working hard to diversify our economies and find new enterprises that can provide the revenues we need to support our communities and protect and enhance our unique cultures. However, the Supreme Court's misguided decision in *Carcieri v. Salazar* has thrown Indian Country into chaos, effectively creating two classes of Tribes: those who can take land into trust and those who cannot. The legal ambiguities resulting from *Carcieri* have further delayed the already severely backlogged land-into-trust process, and have given birth to other harmful case law challenging and destabilizing land that has been held in trust for decades. Because of *Carcieri* and resulting legal challenges, Tribes are finding it increasingly difficult to secure financing and attract investors for economic development projects as questions are raised about the status of lands on which these projects would be located. For six years now, we have been seeking legislative relief that reaffirms the status of lands currently held in trust for Tribes and confirms the Secretary's ability to take future lands into trust. In doing so, this legislative fix would return us to a status quo of 75 years of prior practice, It is impossible to have any conversation about modernizing the trust responsibility without first ensuring that the Federal Government's obligations apply equally to all Tribes. This includes the ability of ALL Tribal Nations to restore their Tribal homelands as intended by the 1934 Indian Reorganization Act (IRA).

Conclusion

The current trust model fails to recognize the inherent sovereignty and sophisticated governance of modern Tribal Nations. The time has come for a comprehensive overhaul of the trust relationship, one in which Tribal sovereignty is fully acknowledged, respected, celebrated, protected, and promoted. As this Committee, this Congress, and this Administration consider opportunities to provide necessary changes to the sacred relationship between Tribal Nations and the U.S. government, USET stands ready to provide guidance and partnership. We appreciate the Committee's interest in this important topic, are grateful for the opportunity to testify, and invite any questions the Committee may have.

The CHAIRMAN. You did, thank you so much.

[Laughter.]

The CHAIRMAN. Let the Committee record reflect the fact that you did pretty good. Thank you.

I would like to go to questions now. I appreciate the witnesses' being here today. I would like to ask Senator Lankford to start.

STATEMENT OF HON. JAMES LANKFORD, U.S. SENATOR FROM OKLAHOMA

Senator LANKFORD. Thank you. I apologize for my voice. At this point, I feel better than I sound. I apologize for that.

It is good to see all of you. This is obviously an extremely important topic for us long term to be able to deal with. It does require a legislative fix.

Mr. Washburn, let me ask you a couple of questions, and one is because I can talk okie-okie to you and go from there. The other one is just, there are so many different issues that are unique in

Oklahoma that are just a dynamic of being in a non-reservation area. Taking land into trust is a very common practice in Oklahoma.

Let me ask, is there a map established that BIA has that clearly delineates all land that has been taken into trust? That is, a detailed map that we could have access to?

Mr. WASHBURN. We can provide that for you. You bet.

Senator LANKFORD. That would be very helpful not only for the State, but for the Nation as well, to be able to get a detail. Because in many areas, it is a quilt. And so it would be clear to be able to see for us as well in that process.

The other one is, taking Indian land into trust in areas that is typically not historically tribal land in the past, how do you manage that relationship with counties, cities and States, when it is an area that is not a historic tribal area but yet is being requested to be taken into trust? So walk me through the process of that.

Mr. WASHBURN. Well, let me just say this. We very rarely take land into trust for a tribe if it is not a historic tribal area. That is a very unusual situation. But when we take land into trust anywhere, we very carefully manage the relationship with State and local governments, the county, the city and the State. We specifically ask for their views. The whole public can comment.

With regard to State and local governments, we send notice by certified mail and specifically ask them to weigh in.

Senator LANKFORD. What is the length of time of that comment period? Is that weeks, is that years?

Mr. WASHBURN. No, it's usually 30 days. But when they ask for more time, we always give it. We want to have their views. That is the bottom line, we want their views. So we tend to be very willing to extend the time of the comment period if they need it, and sometimes they need it. That is not an uncommon request.

We very carefully consider their views. And I will tell you, if the city and the county and the State or any of those are upset about it, it takes a lot longer to get that land into trust.

Senator LANKFORD. Define for me a lot longer.

Mr. WASHBURN. Well, those are the applications that tend to languish for years and maybe are never approved. If we get a good agreement among all those groups, with the tribe, those are the applications that actually sail through the process and get through the process quickly. It is a really complicated process. But if there is good agreement and service agreements in place and that sort of thing, that is where we get quick land into trust decisions.

We have done more than 1,900 of these since the beginning of the Obama Administration. The ones that go well are when all the issues are worked out between the parties and the people that might object. It is a relatively small number where there is actually a strong objection.

Senator LANKFORD. On those rare occasions where land is not historic land, tribal land, how does that process work? Is it different?

Mr. WASHBURN. Well, it is different. We have different systems in place. It is slightly different. Again, it is really unusual for us to take land into trust outside a tribe's aboriginal area. But many of the aspects of the system are the same.

I have a step-by-step process in my testimony which is, sorry, it is dense, it is 13 pages, single spaced. But we explain a lot of that in there pretty carefully.

We have been beat up by this Committee particularly over the years because our oil and gas leasing is like 43 steps to get a lease done. Here we have at least 16 steps for land into trust and it is not enough steps for some people. Some people want more red tape, and some people want less red tape.

Senator LANKFORD. Put me on the less side. A clear, delineated processes always help everyone.

You mentioned the oil and gas side of things. Let me bring it up. Osage Nation in Oklahoma is a very unique dynamic in that they own all the mineral rights for the nation. In a situation like that, should the Osage Nation be entrusted to be able to take care of their mineral rights? At what point can they make the decision?

I know you know this issue well. I am not going to try to work you into a corner on this. But this is becoming more complicated as now the court has now set it aside, and said let's delay this process, let's talk about it even more. Where does this go from here and at what point can the nation actually have some self-determination for its mineral rights as well?

Mr. WASHBURN. Thank you, Senator. One of the issues with regard to Osage is, Osage is unique because there is special congressional legislation that says Osage shall be unique and it will be handled differently than everywhere else in the Country. So we just finished, you know this, we had engaged in a rulemaking at Osage, a negotiated rulemaking where we tried to bring the relevant parties together, and have come up with a final rule that was about to take place. Then we were sued, and we agreed to hold off on implementing that rule temporarily, while the judge has time to determine whether there is a real problem here.

But there are many different interests involved. Our big interest is that the taxpayers paid $320 million to the Osage Nation fairly recently for breach of trust. Our effort is to ensure that we meet our trust responsibility to the Osage Nation so the taxpayers don't have to pay hundreds of millions of dollars again soon. So that is our number one goal.

But we need to manage other interests in that process.

Senator LANKFORD. You need oversight, you need a new piece of legislation to deal with that? What is better to deal with the Osage issue? This is a piece of legislation that started all this, do you need that to be able to fix it? What is better?

Mr. WASHBURN. Well, we do want to talk with you about that. Let me not answer off the cuff, because this is an important matter.

Senator LANKFORD. That is a reasonable conversation. Thank you. I yield back.

The CHAIRMAN. Thank you, Senator Lankford. Senator Franken?

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman. Thank you, Vice Chairman Tester, for holding this hearing, and thank you to our witnesses for your testimony.

The ability of the Department of the Interior to place land into trust for Indian Tribes is essential to sovereignty. Assistant Secretary Washburn described in his testimony the many benefits of trust acquisitions, including the ability to create housing, promote economic opportunities and protect tribal culture. But the Supreme Court rolled back tribal sovereignty in its 2009 *Carcieri* decision. That decision in effect created two castes of tribes, those under Federal jurisdiction before 1934 and those recognized after 1934.

This is unfair and to me it is contrary to the purpose of the Indian Reorganization Act, which was supposed to reverse decades of removal and allotment by allowing the partial recovery of lands for Indian tribes.

That is why I have co-sponsored legislation to fix the *Carcieri* decision in every Congress since I came to the Senate. I look forward to this Committee marking up Vice Chairman Tester's clean *Carcieri* fix and I hope we can finally get to this important legislation and get it enacted.

Assistant Secretary Washburn, it is always good to see you. The *Carcieri* decision created a lot of uncertainty for tribes petitioning to place lands into trust. This is a problem for all tribes, regardless of which they were federally recognized, because it further complicates and delays the trust acquisition process.

Can you briefly summarize the effect of the *Carcieri* decision on BIA's trust acquisition process? How is the BIA now determining whether land can be taken into trust, given the court's decision?

Mr. WASHBURN. Thank you, Senator Franken, and thank you for your leadership on this issue.

The BIA and the Solicitor's office have to do a tribe by tribe analysis to determine whether that tribe was under Federal jurisdiction for the purposes of the *Carcieri* decision as of 1934. Overall, what that means is that it just slows us down tremendously. It adds a lot of burden and makes it a lot less efficient to engage in the fee to trust process.

Some tribes, it is not a problem for them, frankly, it is not a problem directly for them. But what happens is, we have all these resources working for other tribes to do the *Carcieri* analysis. So those are people who are not working for the tribes that need land into trust. So it has been a horrible burden.

Senator FRANKEN. So it is fair to say that if all federally-recognized tribes were eligible, that land taken in trust, that would simplify the trust acquisition process for both BIA and for the tribes?

Mr. WASHBURN. Absolutely. And it would be more just, as you noted.

Senator FRANKEN. Councilwoman Lintinger, the Tunica-Biloxi, has a long history, but it wasn't federally recognized until 1981. Now, the Supreme Court has drawn a line between the tribes under Federal jurisdiction by 1934 and those not. What did that decision mean for your tribe and other tribes in your region?

Ms. LINTINGER. Well, it certainly obviously reversed eight decades, 80 years of interpretation and practice that tribes relied upon. It forces us, as the Assistant Secretary mentioned, to spend resources proving, going through this process again that we don't have an issue. It affects our business operations. It increases the risk, as the status of land is an integral part of any business pro-

posal, proposition, when we seek financing. As risk goes up, the cost of capital goes up.

So at a time, being within the United States, we experience economic downturns just as other areas of the country do. So as we are facing these challenges and we are trying to diversify, going into other industries, it creates a burden and higher costs. Resources that we could be spending on social service programs as part of our self-governance and self-determination rights and our inherent sovereign authority.

So it is a waste of time, money, resources, it is just not efficient. It is not effective.

Senator FRANKEN. I am out of time, but it would be very fair to say that a *Carcieri* fix would help economic development in Indian Country?

Ms. LINTINGER. Exactly, it would.

Senator FRANKEN. Does everyone agree?

Mr. WASHBURN. Yes, sir.

Ms. LINTINGER. Absolutely.

Senator FRANKEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Franken. Senator Crapo?

Senator CRAPO. Thank you very much, Mr. Chairman.

I will start here on this side of the table. Councilwoman Lintinger, it is good to see you back here.

Ms. LINTINGER. Thank you.

Senator CRAPO. You are a strong and consistent advocate for tribal self-governance and sovereignty.

I just have one question. I actually know the answer, but I want to give you a chance to say this on the record. That is whether the Tunica-Biloxi tribes are in support of Senate Bill 383, the legislation I referenced earlier that we have been working with the Coeur D'Alene Tribe on?

Ms. LINTINGER. Yes, we are in support, sir.

Senator CRAPO. I thank you for that very much. I do appreciate it. Like I say, it is good to see you here so consistently on the Hill fighting so hard for these critical issues.

Ernie, my good friend, I would like to ask you a couple of quick questions. With regard to Title II of Senate Bill 383, which would establish the trust asset demonstration project to allow tribes to direct the management of their trust resources, can you give me an example of how this might help the Coeur D'Alene Tribe?

Mr. STENSGAR. Senator Crapo, certainly. In our forest management, for instance, we have a number of stands that we would like to set aside for spiritual or cultural reasons. Currently the Bureau has a cut date that they make us adhere to. So it is very difficult to do that.

Other issues are if we want to make a management decision and not cut, maybe just manage the dead and dying and wait for the market to raise, I think in the last several years the timber market has been down. We prefer not to harvest during those times, and wait for the prices to go up. But we are unable to do that.

Under 383, it would allow us to do that without going through to Interior and getting permission to make those management decisions.

Senator CRAPO. I understand that other tribes face the reverse type of problem sometimes, if they want to allow for a cut, then they are not able to get that kind of a management decision made?

Mr. STENSGAR. Certainly.

Senator CRAPO. One other quick question, Mr. Stensgar, and that is, Senate Bill 383 contains new provisions relating to the appraisals of trust property. What kind of problems has your tribe or other tribes that you are aware of had with getting appraisals that make these provisions necessary?

Mr. STENSGAR. Obviously there is, working with the Bureau of Indian Affairs historically to do any type of cutting and getting appraisals has been the way we have been used to doing it. OST has assumed parts of that and we don't quite understand how that works any more. But we go to the Bureau of Indian Affairs and they say, we can't handle those issues, this part of it. We have to go to OST. So we go to OST and maybe we get an officer over there that will send us back to the Bureau. Until we get it ironed out, it is very difficult to carry out any management functions or any business.

Senator CRAPO. I hope we will be able to remove that red tape and allow for proper management and efficient management decisions.

Speaking of the OST, Mr. Washburn, are there any of the major reforms to the management of the Indian trust funds that remain for the OST to implement?

Mr. WASHBURN. Well, the Office of Special Trustee has taken over very important functions from the BIA. They have done a very good job of managing those functions. So they actually have an ongoing responsibility that is really important. And they do it well, honestly. They have a very professional staff. They have, frankly, been managing it well.

From our perspective, there is nothing broken here that needs to be fixed. So we are, I guess cautious, about efforts to sunset OST or claims that that is needed.

Senator CRAPO. There is sort of a joke that sometimes goes around that there is never a temporary government project at the Federal level. Wasn't the OST intended to be a non-permanent or temporary function to manage certain trust fund reforms?

Mr. WASHBURN. Well, managing trust funds isn't a permanent function, and they are doing a great job of it. And I can use all the help I can get. BIA has been all things to all people for far too long. First, the Indian Health Service was taken away from the BIA. That was probably an improvement, because that allows them to focus narrowly on a very important function, health care.

And frankly, this fiduciary management of monies is a very important function. It is good to have that in the hands of experts.

I heard the statement that said we have delay, miscommunication and inefficiency. But we have that internally within the BIA sometimes, too. Government bureaucracy is hard. Jamming these two agencies together is not the magical solution to all government inefficiency or miscommunication. Communication is one of the hardest things we do.

So we are comfortable with the situation the way it is. I am grateful to have the support. We work very closely with the Office

of Special Trustee. Again, they are wonderful staff over there and they work really closely with the BIA on myriad subjects, including appraisals. Somehow, we have managed to take over 900,000 acres of land into trust in about two years. That has required a lot of appraisals. So arguably, that specific function is working fabulously well, otherwise we wouldn't have been able to accomplish that.

Senator CRAPO. My time is expired, so I can't go into it with you any further. We can agree that there is a lot of government red tape that needs to be fixed here. With regard to the specifics of this, I guess I will have to explore that on my own time later.

Thank you, Mr. Chairman, for this time.

The CHAIRMAN. Thank you, Senator Crapo.

Senator Udall?

Senator UDALL. Thank you, Mr. Chairman.

The Navajo Nation, our largest tribe in the Nation, is represented here today. We have a newly-elected president, Russell Begaye, who is here with us in the audience. Russell, good to see you here. I know your vice president, Jonathon Nez, is also here.

One of the things that is relevant to this discussion that I thought I would talk just a little bit about, the Navajo Nation, President Begaye was elected on a platform where he talked about bringing young Navajo professionals all around the Country back to the Navajo Nation to work for the Navajo people.

It seems to me when we talk about self-determination, that is the kind of thing that can make self-determination work much better, to have that kind of expertise and the responsibility, Secretary Washburn, that you carry out can be taken over by a tribe in that kind of situation. Would you agree with that?

Mr. WASHBURN. Absolutely.

Senator UDALL. Let me focus on one area, here. As you know, Secretary Washburn, in the 1960s, President Lyndon Johnson established the National Council of Indian Opportunity to reevaluate the trust responsibilities of the Federal Government. It included the Vice President, Secretaries from relevant departments along with eight tribal leaders. This created an opportunity to sit down, roll up sleeves and work on improving government-to-government relationships. Arguably, it kick-started the self-determination era.

Do you think it is time to reconvene the Council to once again reevaluate what is working and what needs improvement?

Mr. WASHBURN. Senator Udall, let me just say this. We have had a number of commissions and councils, blue ribbon commissions that have studied issues in Indian Country. Frankly, each time we have one of those, there is useful information that comes out of it. Honestly, sometimes that is what it takes to get momentum to make reforms.

So at any given time, we usually have several of those running. But the National Council for Indian Opportunity was effective and something like that might well be useful.

Senator UDALL. Over the years, we have legislated to improve Indian self-determination in particular areas of need, whether it be energy, health care, labor. I know on health care, you talked in your statement about how the HEARTH Act had allowed you to do certain things.

Do you think it is time for a comprehensive approach, or do you believe each issue is unique and that the piecemeal approach is the better way to proceed?

Mr. WASHBURN. Well, it is a great question. Let me just say, we have proven that tribal self-determination and self-governance is the answer. We have proven it in a bunch of different subject matter areas. To a great degree, and I think I have probably said this here at this Committee before, Rube Goldberg himself couldn't have come up with a more complicated system to ensure there is tribal self-determination in myriad different areas.

So we would have to talk about the specifics. But recognizing that this is a great approach is something that we should do. We should look for ways to recognize tribal self-governance and tribal self-determination in all areas.

Senator UDALL. Now, there are proposals floating around to establish an Under Secretary for Indian Affairs, with the understanding that this person would carry out any activity relating to Indian trust asset management of the Bureau of Indian Affairs and the Office of Special Trustee, essentially consolidating your current position with the Special Trustee. What is the Administration's position? What are your thoughts? Do you think this is a good approach? Do you think that both responsibilities should be consolidated?

Mr. WASHBURN. It would be self-serving for me to say yes, it should be consolidated. Honestly, we have been worrying about turning the Titanic in essence, and that seems like a moving the deck chairs around kind of issue.

We do our job. The whole United States Government has the trust responsibility to Indian tribes, let me first say that. So we are strongly against any inclination to sort of hang it on one individual like myself. Because I need help. And I need every other Cabinet Secretary and Assistant Secretary and Deputy Secretary around the government to realize they too have a trust responsibility.

So we are cautious about this whole approach, anything that would sort of magnify it on one person. Because it is the whole Federal Government's responsibility, and your responsibility and the Chairman's responsibility and the Vice Chairman's responsibility. We all have this responsibility.

Senator UDALL. I couldn't agree with you more. I think it is very important that all the Federal agencies, the responsibility that they have, that they understand and fulfill it and take the time to consult, like you talked about, which is the essence of the government-to-government relationship. So that is tremendously important.

That is why I think the National Council on Indian Opportunity was good. The Cabinet was there at the table all the time with tribal leaders. They were an input from tribes all across the Nation in terms of wanting to see reform. If you have Cabinet members every couple of weeks sitting down and listening to that then they think of things that they can do in their respective departments.

So thank you very much, the witnesses have been very good. I am sorry I didn't get to ask questions of the other two witnesses.

Thank you.

The CHAIRMAN. Thank you, Senator Udall. Senator Moran.

STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS

Senator MORAN. Mr. Chairman, thank you very much. Thanks for hosting this hearing.

Let me turn to the Councilwoman, since you did so well.

[Laughter.]

Senator MORAN. You seem to be perhaps the most forceful, at least you raised your voice when you talked about it is time for a *Carcieri* fix. Senator Tester and I have sponsored legislation for what has been described as the full *Carcieri* fix. But it hasn't happened.

As I have gotten involved in this issue, there have been other suggestions from tribal leaders who visit with me and various tribal organizations who remain committed to a clean fix. Others have suggested different avenues. My question is, the direction that you would suggest that we go, I think it is the Poarch Creek Tribe that has visited with me about what I initially called a *Carcieri* light fix, which is better described as land reaffirmation.

Do you have suggestions, should we stay committed at this point in time to a clean *Carcieri* fix, or is there something in the interim, while we work to get a clean *Carcieri* fix that we ought to be pursuing that would be beneficial, useful today? And more obtainable.

Ms. LINTINGER. I will say that our goal is a clean *Carcieri* fix. How that gets accomplished, whether it is in stages or in one fell swoop is in your lap, basically. Certainly we would like it all done at once. It is draining valuable resources, it is forcing us to fight battles unnecessarily. It is calling into question numerous aspects, besides business, in the court systems, our tribal court systems. It is problematic.

My great-grandfather, Chief Eli Barvary, visited the United States in the 1930s. He didn't know he had to have an appointment. He was coming here for help. But the processes, the system, didn't offer him help, didn't provide help to him and his people.

And here I sit today, six years this decision has been hanging over us. It is costing us every day. And it started on a housing issue for elderly people. Why should there be so much trouble fixing something so obvious?

So I would encourage you to seek out a clean *Carcieri* fix. If it comes in stages, well, we have to go that route, we don't have a choice. The decision, the voting power is in your hands.

But this Committee is our voice. We see you as our voice, as the Senate Committee on Indian Affairs. Someone has to champion this cause. That is why we come to you.

So that would be my answer. I hope it is helpful.

Senator MORAN. I used to worry about how to pronounce what I call *Carcieri*. You said it differently than I did, but I no longer worry about it, because almost no one says it the same way.

Ms. LINTINGER. Well, the Narragansett's, who had this issue obviously developed in their lands, pronounce it *Carcieri*. So I yield to them.

Senator MORAN. I will work at improving my pronunciation.

Let me ask the Under Secretary the amount of litigation. Are there litigations pending now as a result of the decision that was just mentioned by the Councilwoman?

Mr. WASHBURN. There are, Senator Moran, both administrative litigation before the Department and litigation in Federal courts around the country. There is a lot of litigation pending.

Senator MORAN. Can you tell us what you think, is there risk to tribal lands today as a result of that litigation?

Mr. WASHBURN. Well, ultimately we hope not. But there is great uncertainty. Litigation itself creates uncertainty. It is a small, very small minority of land into trust decisions that have significant opposition. But this issue can increase the uncertainty, especially around those controversial land into trust decisions. So it is definitely a problem for tribes.

Senator MORAN. Do you have any advice to us in regard to this issue of a clean fix? Is there anything in the interim that would be of value to you?

Mr. WASHBURN. We have been motoring forward. We have taken more than 1,900 applications of land into trust since President Obama has been President. A little bit of that was prior to the *Carcieri* decision. Carcieri was the Governor of Rhode Island, and I am not a fan, because he brought this case. But he probably deserves to have his name pronounced the way he pronounces it, and he pronounces it Carcieri.

But we really would love to see a clean *Carcieri* fix. We think that that is within the power of this Congress. We hope that perhaps, in Congress, the majority has changed since this issue has been pending and we kind of hope that the shakeup, if it had any effects, that this might be something that might be possible. We would continue to urge Congress to pass a clean *Carcieri* fix.

Senator MORAN. I appreciate that urging. To our witnesses and the audience and to my co-sponsor, Senator Tester, I remain committed to pursuing a clean fix.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moran.

Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I want to thank Senator Moran for his leadership on a clean *Carcieri* fix. I look forward to working with him to get this thing across the finish line. I think it is important for Indian Country. I think it may be the most important issue for Indian Country, in fact.

Kevin, I have the distinct honor and privilege of farming land that my grandfather homesteaded when he came out in 1910. He farmed it until the 1940s when my folks took over, then they turned it over to us in the 1970s. Before that point in time, it was pretty much Indians and buffalo.

What constitutes an historic tribal area? It seems to me that unless you are just counting, in Montana, the last hundred years, in other States it is going to be a little longer, what constitutes an historic tribal area?

Mr. WASHBURN. That is a tough question. One of the things, tribes know themselves, and they sometimes argue about whose historical area that is.

Senator TESTER. Oh, so it is a scrap between the tribes?

Mr. WASHBURN. Sometimes, yes. Sometimes that is true.

Senator TESTER. It seems to me like unless you are just counting the last 100 years or 150 or 200, 250, wherever you are, it is all historic tribal area.

Mr. WASHBURN. Vice Chairman, I have a bumper sticker that says Indian Country, and it has a picture of North America and South America next to it. I kind of view that as, it is all Indian Country at some point.

Senator TESTER. As far as taking land into trust, are these lands already owned by tribal governments?

Mr. WASHBURN. Yes. That is why tribes find this so frustrating. We took it from them in the first place, then they reacquired it. They repurchased it. In many cases it was stolen from them. They had to repurchase it. Then we put them through the wringer before we actually take the land into trust.

They never got a veto over whether a county or city was created in that area, but now they see the county or city wanting to have a veto power over them taking land into trust.

Senator TESTER. Right. And we continue to hear, at least I continue to hear in areas where land is being taken into trust, pushback from the counties, taking it out of their tax base. And I see that. But I also think there is some pretty good benefit in many, if not all, of these projects.

My question is, why don't we hear about the benefits of land going into trust?

Mr. WASHBURN. Because only the controversial ones get any attention, I think it is probably 40 to 1 favorable land into trust applications to one negative one. But it is the negative one, one out of 40 or 50 or something like that, that tends to get all the attention.

Often, counties and cities are in favor of land going into trust, because it serves economic development for them too. But they don't holler about those. They holler about the ones they are upset about.

Senator TESTER. I want to go over to Senator Crapo's bill, which incorporates a lot of things from the HEARTH Act. I am a big believer in self-governance, I know you are too. So we are going to extend the HEARTH model to natural resources. I really think that is a good idea, but I just want to ask you about something that we don't really talk about, and the Federal Government is guilty of this as well, State government as well as private landowners.

What happens in Indian Country if there is an environmental wreck with the decisions they made? Who pays to clean up that environmental wreck?

Mr. WASHBURN. Under Senator Crapo's bill, it would be the Federal taxpayer that would pay if there is an environmental wreck. Because the liability remains on the Federal Government. And there is some heartburn about that. We generally structure liability rule in the United States so that the actor who is acting bears responsibility for their actions. This bill doesn't do that exactly.

Senator TESTER. So we have a guy behind you, and I don't want to put him on the spot, and it has to be with the concurrence of the Chairman, that is shaking his head no. Can I ask him if he can come up? Do you want to come up and tell me if you have a

different opinion and why? You have to identify yourself for the record.

Mr. GUNN. Sir, my name is Brian Gunn, I am counsel for the Coeur D'Alene Tribes and I have been working on this bill.

The HEARTH Act provision that is in S. 383 extends the HEARTH Act to forest management activities only. And that provision, that the same liability, waivers of liability that are in the existing HEARTH Act are in that language. So the provisions is not intended to increase liability at all.

Senator TESTER. No, I don't think that was the question, though. The question was who is liable. So we both agree. Thank you very much for the clarification.

One last thing, and I only have a second left, but I have to ask the lady, Brenda, the question is, could you tell me very quickly, because my time has run out, the kind of economic development projects that your tribe has not been able to do because of a lack of a *Carcieri* fix bill?

Ms. LINTINGER. Well, we have had several business opportunities that have come online that we have explored and done due diligence and have not been realized. As I said earlier, the status of the land is always an integral part for any business development.

Our tribe, as you may or may not know, had a determination by the Bureau of Indian Affairs that we do not have a *Carcieri* issue. However, that is insufficient for us. We can't stop there, even though we have that determination. Because there is still this existence of a two-tier or two-class system within the Country. That is unacceptable to us.

So while it may not impact us directly in the same way, there are other tribes who will be impacted in a greater fashion.

Senator TESTER. I got it.

Ms. LINTINGER. And we can't stand silently by for that.

Senator TESTER. Thank you for your testimony and thank you all for being here today and testifying. We look forward to working with you and doing right by Indian Country. Thank you very much.

The CHAIRMAN. Thank you, Senator Tester. Senator Hoeven?

STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Thank you, Mr. Chairman. I would like to thank all the witnesses for being here today.

Ms. Lintinger, when I served as Governor of North Dakota, the Governor of Rhode Island at that time was Governor Carcieri. I think Senator Moran was right, I don't think any two people ever pronounced his name the same.

Ms. LINTINGER. My inclination was Carcieri.

Senator HOEVEN. I heard that version, too, amongst others. And I do remember the lawsuit, I think it was ongoing at the time.

Thanks to all of you for being here. Secretary Washburn, thank you for your help and support with the Native American Children's Protection Act, which I sponsored, along with Senator Tester. It has now passed both the Senate and the House. So we have to reconcile a final version and then it is off to the President. Of course, that is all about protecting Native American children in foster

homes. Your assistance was invaluable, and I want to thank you for that.

Mr. WASHBURN. Thank you for your leadership. Thank you for getting that bill passed.

Senator HOEVEN. I appreciate it and I wanted to put that on the record, that your help and support was vital.

I want to talk to you about the Land around Lake Sakakawea. For over 10 years, the Department of the Interior and the Army Corps of Engineers have been engaged in a potential transfer of garrison project lands from the Army Corps of Engineers to be taken into trust by the Interior. In 2007, North Dakota's entire delegation went to the Corps and Interior laying out several of our concerns. We wanted to make sure several issues raised by the local people were addressed before any transfer occurred.

One of the primary concerns raised back then was the potential that public access to Lake Sakakawea would be reduced. For years, this area has been used by many North Dakotans and many others from on and off the reservation for hunting, fishing and other recreational activities.

Under this transfer, there is concern from cabin owners, hunters, fishers, and others that access, as far as their access to the lake or areas around the lake, concern that that access could be restricted. Additionally, Interior and the Corps never specifically identified which acres would be transferred, which concerns the North Dakota Game and Fish Department, because it has wildlife management areas that could be caught up in the transfer.

There are still serious concerns that have yet to be addressed. And it is my understanding that since 2007, neither the Corps nor Interior has held any public meetings to hear from locals before it again moved forward with this proposal. In fact, two weeks ago, Governor Jack Dalrymple wrote to Secretary Jewel citing similar concerns the delegation had expressed in 2007 and 2008. I was Governor at that time.

With this in mind, can you please discuss what action the BIA and Department of the Interior are taking to address the concerns raised by the State and locals? Is there a plan to ensure that the rights to access the acres in question by Indian and non-Indian citizens alike are protected? Is there a plan for public meetings to take input before any action is taken?

Mr. WASHBURN. Senator Hoeven, I guess what we would say is we are following the law. The law that Congress enacted says that the lands that were not needed by the Corps for the flood control project must be returned to the tribe. It has been hard to determine, it has taken decades to determine actually what did the Corps need.

But now that that need has been determined, it is just another broken promise to the tribes until we return the land to them, as we promised we would in that congressional statute.

So the statute didn't provide for public input. We are interested in public input. But this is mandatory. Congress has directed us to return to the tribes the land that is not needed for the flood control project. Because it was taken from them in the first place on the theory that part of this land is needed for the project. So that has been our effort.

I will tell you that from my conversations with folks, it sounds like they all share the same interests. The tribe largely wants that land for tourism and economic development. So they need people to be able to access the lake. And so they seem to be very onboard with just the concerns you mentioned, that the public have access. That indeed is one of their number one goals.

So I don't think that is actually a real problem, at least from the tribes' perspective. So we will continue to follow the law as best we can. We will certainly, we are interested in public input but we really have an obligation to these tribes. We took the land from them and we promised we would give back what we didn't need. And we haven't done that yet.

Senator HOEVEN. Mr. Secretary, you need to check. In many cases, that land was taken from individuals, not from the tribe, from individuals. And you have many, many interests represented around that lake. You have an entire congressional delegation and a governor and an entire State that want you to make sure darned sure all interests are protected. You need an open, transparent process, including hearings, to make sure you hear from people on the ground. I think the law does require that.

I understand you have your interpretation of the law. There are other interpretations too. Regardless, we need to protect everybody's rights. And when you say it was taken from the tribe, you need to check. In many cases, it was taken from individuals, both Indian and non-Indian. So let's make sure we are very inclusive in this process, open and transparent. You have to have some kind of hearings, some kind of process.

Also, please look at that letter from the Governor and make sure that there is a response to the issues that are raised in that letter.

Mr. WASHBURN. We will do that, Senator. Thank you.

Senator HOEVEN. Thank you, Mr. Secretary. And again, we have worked on many issues. I know you are thorough and professional and you are someone we can work with. So we look forward to making sure this is done carefully and that everybody's rights and interests are protected and considered fairly.

The CHAIRMAN. Thank you, Senator Hoeven.

Secretary Washburn, I want to follow up on one of Senator Crapo's questions to be sure we get a clear answer. It was referred to the Indian Trust Fund Management Reform Act of 1994. Could you point to a reform that was tasked in that piece of legislation that the Office of Special Trustee has not yet implemented? It is 21 years, and they have been there, and we just have concerns about this.

Mr. WASHBURN. Let me just say that these things do develop a life of their own, organically, as Senator Crapo recognized. So no, I cannot do that.

But I will tell you, they have come to perform a very important function to meet the trust responsibility that the United States has to Indian people and Indian tribes. That is a very important function. We count on them to perform that function and I think they perform it well.

The CHAIRMAN. So then why did the Administration yesterday decide that they weren't going to be here to testify today and pull

him off a panel and they had already been noticed and we had already had it printed up that they were going to be here?

Mr. WASHBURN. Chairman, this is the 20th time I have been before this Committee in the last three years, and I haven't been given a gold watch. Not everybody enjoys coming over here for, I think you may have another so often. Honestly, I haven't been here since March, and I thought maybe you had lost my phone number.

The CHAIRMAN. We were looking forward to having both of you here.

Mr. WASHBURN. Well, it is a privilege for me to come over here, of course, but not everybody enjoys it as much as I do.

The CHAIRMAN. Well, sometimes it is not about the enjoyment of the individual, it is about the cause that needs to be done, the efficiency of government, the efficiency of making sure taxpayers' dollars are being used properly. For somebody to say, I don't enjoy it, so I am not going to go, is really not an acceptable answer to the United States Senate or this Committee.

Mr. WASHBURN. Chairman, you talked about duplication of effort. You got me, and you can beat on me all day long. But you talked about duplication of effort in your opening statement.

The CHAIRMAN. We had some specific questions for that individual. And for the Administration yesterday, to first approve and then the day before the hearing say oh, no, we are going to pull the rug out, that is unacceptable. Because I believe that we have to work together to improve many of the outdated systems and processes that are preventing tribes from fully exercising their sovereignty for the benefit of their people. That is what this is really about. I think it is especially true when it comes to Indian lands.

So we have heard many concerns about the land to trust application process. You indicate some of them. Based on your experience at Interior and outside the Department, can you identify and describe some specific portions of Part 151 process that could be improved? We hear things and staff hears things in terms of specific concerns.

Mr. WASHBURN. Let me just say, there was a strong effort during the Clinton Administration to improve the Part 151 process. A lot of people worked really hard on that for about three years. Ultimately, it all came to naught. It was never implemented even though a final rule was passed. It was stopped by the new Administration that came in after President Clinton.

So a lot of effort, we looked at that and thought that we wanted to get things done for Indian Country. So I can't tell you about specific things that need to change with 151. We have done some tinkering with it and honestly improved it. But that is working, too. We have taken 1,900 applications for land into trust and successfully moved them through the system.

So that is working very well for tribes. We have 300,000 acres to prove it.

The CHAIRMAN. One of the concerns Committee staff has heard relates to changes in land use after land has been taken into trust. Do you believe that that part of 151 needs additional protections, for changes in land use?

Mr. WASHBURN. We don't think the tribes need more red tape on them after they already have land into trust. We are trying to re-

store tribal sovereignty by getting land back to tribes. So we would not be in favor of anything that imposes additional regulatory hurdles on tribes as they seek to exercise their sovereignty on their lands that are in trust.

The CHAIRMAN. To Vice Chairman Stensgar, the Committee is committed to expanding tribal sovereignty and self-determination. With proper safeguards and support, giving tribes the freedom to manage their own lands seems like an important step in that direction, which would benefit all of Indian Country.

My question is, can you explain how allowing tribes to take greater authority and responsibility in the management of your lands would help expand tribal sovereignty and self-determination?

Mr. STENSGAR. This bill is a step forward in Indian self-determination. It would allow us the opportunity to control how our trust assets are managed. It would certainly give the tribes and individuals a benefit. Tribes and individuals would have the opportunity to obtain appraisals without any paternalism or authorization. It just takes a giant step forward in Indian self-determination and tribal destiny.

The CHAIRMAN. Thank you.

Secretary Washburn, one final thing on this, on 151. Your office announced new rules for the Part 83 Federal recognition acknowledgement process. The new rules provide greater transparency in posting Part 83 applications online. I am just wondering if a similar approach would be useful for the Part 151 applications.

Mr. WASHBURN. We would be willing to look at that. If you pass a clean *Carcieri* fix, I think that is something we can make happen.

The CHAIRMAN. Thank you.

Any further questions from any other Committee member?

Thank you very much for being here. Some people may put some written questions to you. We will hold the Committee record open for an additional week so that members can get questions to you. If they do, I hope you will respond quickly.

Thank you very much for being here today.

[Whereupon, at 3:50 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF JACQUELINE PATA, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Dear Chairman Barrasso and Vice-Chairman Tester:

On behalf of the National Congress of American Indians, I would like to thank the Senate Committee on Indian Affairs for holding an oversight hearing that discussed on S. 383—The Indian Trust Asset Reform Act. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated, inefficient federal trust management system is very harmful to many reservation economies. NCAI strongly supports the legislation and urges swift passage.

S. 383 will take an essential step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make decisions for their communities. Through the trust asset demonstration project created in the bill, tribes will have the ability to manage and develop their lands and natural resources without unnecessary federal encumbrances. This provision of the bill also authorizes tribes to engage in surface leasing or forest management activities—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, S. 383 addresses one of the most significant bottlenecks in the trust system: the Office of the Special Trustee. This office was intended to be an oversight office when it was created by Congress over twenty years ago, but now has taken over management functions and adds another silo of bureaucracy outside the purview of the BIA. The bill requires the Secretary of the Department of the Interior (DOI) to submit a report that will include a transition plan for the Office. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

Thank you for your consideration of this important legislation. We request that the Committee supports and moves this legislation to Senate floor for consideration.

Attachments

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #ANC–14–051

TITLE: Supporting Trust Asset Modernization Legislation

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United States' fiduciary responsibilities to Indians are founded on the settled law of nations, an inherent presupposition of our constitutional structure, and commitments in treaties and written agreements securing peace in exchange for vast tracts of land; and

WHEREAS, the foregoing historic federal-tribal relations and understandings have benefitted all people of the United States for centuries and established enduring obligations to which the national honor has been committed; and

WHEREAS, the United States has assumed enforceable trust responsibilities over lands and resources held by the United States in trust for Tribal Nations and Tribal citizens even if nothing is said expressly in the governing statutes or regulations, and the most exacting common-law fiduciary standards should govern such federal management of Indian trust assets; and

WHEREAS, the United States' fiduciary responsibilities to Indian tribes include and are not limited by a duty to promote tribal self-determination, and the fact that the United States may simultaneously perform another task for another interest that Congress has obligated it by statute to do does not compromise or limit the United States' enforceable fiduciary obligations to Indians; and

WHEREAS, notwithstanding the established law and policy during the Self- Determination Era, employees of the Executive Branch during this period have repeatedly sought to avoid, limit, and repudiate federal trust duties; and

WHEREAS, the American Indian Trust Funds Reform Act of 1994 temporarily created the Office of the Special Trustee, an agency within the Department of Interior that is wholly separate from the Bureau of Indian Affairs but that, over time, has come to perform certain functions and activities historically performed by the Bureau of Indian Affairs; and

WHEREAS, the creation of a bureaucracy within the Office of the Special Trustee to handle Indian trust assets has resulted in confusion and delays in processing trust transactions, with insufficient oversight by the beneficiary Tribal Nations and Tribal citizens; and

WHEREAS, there is no longer a need or reason to have the Office of the Special Trustee as an agency within the Department of Interior that is separate and distinct from the Bureau of Indian Affairs; and

WHEREAS, while the Office of the Special Trustee has implemented positive reforms in the past 10 years, the position of Special Trustee for American Indians has been vacant for approximately 5½ years; and

WHEREAS, NCAI and many Tribal Nations and citizens have continued to advocate for meaningful administrative and congressional trust reform to help ensure that the Executive Branch fully meets all trust obligations of the United States as trustee to Indians; and

WHEREAS, the U.S. Department of the Interior has established a temporary trust commission to evaluate the Department's management and administration of Indian trust assets, and to make recommendations to improve the federal Indian trust administration system, including regarding termination of the Office of the Special Trustee and whether any legislative or regulatory changes are necessary to permanently implement improvements and to prevent future trust mismanagement; and

WHEREAS, the Commission on Indian Trust Administration and Reform issued a report in December of 2013, setting forth numerous recommendations regarding the administration of Indian trust assets that require further study, review and discussion within Indian Country; and

WHEREAS, there is widespread recognition and agreement among Indian tribes that any proposal to modernize or reform the administration of Indian trust assets should include options and opportunities for Indian tribal governments to make trust management decisions themselves as well as modernization of existing trust laws, regulations, policies and practices that restrict or inhibit tribes from exercising their inherent sovereign authority to engage in sustainable economic development for the benefit of their current members and future generations.

NOW THEREFORE BE IT RESOLVED, that as a primary priority NCAI urges Congress to enact trust reform legislation, either as stand-alone legislation or as part of another legislative vehicle to the extent such vehicle is available and appropriate under the circumstances, that will reaffirm the above foundational history and legal principles, require Executive Branch management of Indian trust assets to meet all federal trust obligations with full accountability to Indian beneficiaries, and require federal officials to honor and uphold the trust responsibilities of the United States to Indian tribes and individual Indian beneficiaries; and

BE IT FURTHER RESOLVED, that NCAI urges Congress to transfer the functions of the Office of the Special Trustee, with supporting appropriated funds, to the Bureau of Indian Affairs (BIA) or local BIA offices as appropriate, under the supervision and authority of a Deputy or Under Secretary for Indian Affairs, who would also oversee other Indian trust functions within the Department of the Interior; and

BE IT FURTHER RESOLVED, that NCAI urges Congress to enact a self-determination mechanism to increase tribal control and planning for tribal trust assets and streamline processes to expedite transactions and promote economic development, while maintaining federal trust oversight and responsibilities; and

BE IT FURTHER RESOLVED, that this Resolution supersedes and replaces Resolution SAC–12–023; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8–11, 2014 in Anchorage, Alaska, with a quorum present.

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #MSP–15–029

TITLE: Reaffirming Support for Congressional Passage and Enactment into Law of the Indian Trust Asset Reform Act

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, congressional introduction and enactment of a bill that would establish an Indian trust asset demonstration project and restructure the Office of the Special Trustee, and this draft legislation, the Indian Trust Asset Reform Act, was introduced in both the House and the Senate as H.R. 409 and S. 165 in the 113th Congress; and

WHEREAS, members of Congress in both parties reintroduced the Indian Trust Asset Reform Act in the 114th Congress as H.R. 812 and S. 383, and the bill has bipartisan support from members of Congress across the U.S.; and

WHEREAS, on April 14, 2015, the House Subcommittee on Indian, Insular, and Alaska Native Affairs heard testimony on how H.R. 812 would benefit Indian country and promote self-determination, and the bill was well received; and

WHEREAS, the NCAI and a number of Indian tribal governments from across Indian country have endorsed the Indian Trust Asset Reform Act.

NOW THEREFORE BE IT RESOLVED, that the NCAI supports congressional passage and enactment into law of H.R. 812/S. 383, including changes that are necessary to secure passage in both the House and the Senate that are consistent with the scope and purposes of the bill, is and remains a top trust reform priority; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO HON. KEVIN WASHBURN

1. **How much of the $1.9 billion dollars allotted for Land Buy-Back Program has been spent?**

The $1.9 billion Consolidation Fund has various components, summarized as follows:

Acquiring Fractional Interests (minimum available for purchase payments)	$1,555,000,000
Implementation Costs (not to exceed 15 percent)	$285,000,000
Scholarship Fund (maximum available, depending on interests sold)	$60,000,000
Total	$1,900,000,000

The Land Buy-Back Program for Tribal Nations (Buy-Back Program) has paid nearly $728 million (47 percent of $1.555 billion) to landowners as of December 4, 2015. In addition, the Program has spent approximately $38 million (13 percent of $285 million) in implementation costs and has transferred nearly $30 million (50 percent of $60 million) in sales proceeds to the Cobell Education Scholarship Fund, and.

2. **How many acres have been restored?**

The Buy-Back Program has restored – in trust – the equivalent of approximately 1.5 million acres of land to tribal nations.

3. **How many interests in land have been consolidated?**

The Buy-Back Program has purchased approximately 400,000 interests.

4. **What steps are being taken to increase the number of interests in land being consolidated?**

The Buy-Back Program is a voluntary program, and that principle guides our outreach efforts. We work closely with tribal governments to give landowners every opportunity to learn about the Program before implementation, and have the resources to make informed decisions about their land. If landowners choose not to sell, we also refer to them information to enhance their financial awareness and planning. This information is shared throughout our materials, such as our Status Report, and online at: https://www.doi.gov/buybackprogram/landowners/informeddecisionmaking.

The Outreach phase of the Buy-Back Program includes planning, sharing information, and consulting with tribal leaders to ensure the maximum engagement with potential landowners. The phase also involves addressing questions and concerns landowners may have regarding

the sale of their fractional interests or regarding issues that might arise as a consequence of the sale.

Outreach to tribes involves providing assistance with the selection of priority tracts, sharing information on land and landowners, and developing customized reports for tribes. *Outreach to individuals* is accomplished through distributing mailings, updating the Program website, fielding calls at the Trust Beneficiary Call Center (TBCC), hosting and attending outreach events, developing and disseminating outreach materials (e.g., posters, videos, brochures), and assisting in locating individuals whose whereabouts are unknown.

The Program has thus far has made offers to more than 68,000 unique individuals; more than 31,000 of these people have accepted offers. The Program has mailed more than 220,000 individual postcards to landowners and fielded nearly 75,000 calls to the TBCC. The Program has documented approximately 17,000 willing sellers and has earned more thar 250 million media impressions through efforts in the press.

With respect to tribes, the Program has agreements with 27 tribes. Each agreement is unique in time, scope and responsibilities, based on the expressed interests of the tribe. The agreements outline coordinated strategies to facilitate education about the Buy-Back Program to landowners. Through these agreements, tribes have additionally completed more than 4,000 notary actions, 9,500 mailings, 900 media activities, and 370 outreach events.

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