

**IMPROVING THE TRUST SYSTEM: CONTINUING  
OVERSIGHT OF THE DEPARTMENT OF THE  
INTERIOR'S LAND BUY-BACK PROGRAM**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED THIRTEENTH CONGRESS**

**SECOND SESSION**

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**JULY 16, 2014**  
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**WEDNESDAY, JULY 16, 2014**

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. Jon Tester, Chairman of the Committee, presiding.

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

The CHAIRMAN. The Senate Indian Affairs Committee will come to order.

This afternoon we are discussing the implementation of the *Cobell* settlement and recent efforts by the Department of the Interior to reform and improve their trust management services. The Federal Government holds over 56 million acres in trust for tribes and individual Indians. The Department of Interior manages these lands as well as a number of other trust assets, including timber, minerals and other natural resources.

Many tribes have also established trust funds and settlement funds that are maintained by the Department. Within the Department a number of agencies are involved in carrying out the various trust services and management roles, including the Bureau of Indian Affairs, the Office of Special Trustee, and the Bureau of Land Management. While these agencies may do most of the work in Indian Country, I think everyone is aware that every Federal agency across the government shares in upholding our Country's trust responsibility to tribal communities.

The current Administration has done a remarkable job in settling tribal claims of past mismanagement of trust resources. Over 70 tribal lawsuits have been settled, and of course, the *Cobell* settlement provided some closure to the hundreds of thousands of individual Native Americans whose trust assets were mismanaged.

We will talk about that settlement today. One half of the settlement would provide nearly \$1.5 billion to the individual Indians across the Country. These individuals have land and other trust assets that the government did not properly manage for decades, and these payments are meant to address these mistakes.

However, four years after the settlement was first agreed upon and 20 months after the final approval by the courts, these payments have not gone out. The first wave of payments was distributed, but the second and for many people, the larger payment, has yet to be delivered.

So we will have witnesses today who can comment on these delays and share with us when these payments will finally be made. These payments will go a long way in helping families across Indian Country.

The settlement also provided \$1.9 billion to the Department of the Interior to operate a land Buy-Back program. The Buy-Back program will purchase small fractional ownership interests in trust lands from individuals willing to sell their interests. While many people have raised concerns that half the settlements funds were given to the Department, at least 85 percent, or \$1.5 billion of this fund, will go directly to individual Indians who decide to sell their fractionated interests in trust lands. These interests in land purchased by the Department will then be consolidated into tribal ownership with the goal of freeing up the land for beneficial use by the tribes.

When we last heard about the Buy-Back program in December, no purchases had yet been made. Since then, over \$70 million has gone out to individual Indians and over 200,000 acres have been consolidated back to tribal ownership.

While the program has made great strides in a small number of reservations, yet there is still a lot of work to be done. The land Buy-Back program is required to carry out the program within 10 years and we are now 20 months in. To ensure that the program is successful within those 10 years, the Department will need to expand the program to more reservations and to do so quickly. I understand the program has identified 20 reservations it intends to target by the end of 2015, and I hope the Department can meet that goal. This Committee has heard concerns from tribes that the program is moving too slowly and that cooperative agreements between the programs and the tribes are difficult and time-consuming to negotiate. I think the program is up to about 12 tribes with agreements, and work can now begin on appraising and purchasing these fractional interests in land at these tribes' reservations.

So we hope to hear today from our witnesses on how the Buy-Back program successes over the past six months can be replicated at more locations and how the program can continue to improve. Our hearing today will also focus on the Department's ongoing trust reform efforts, departmental reforms and how it manages trust assets and provides services to tribe and individual Indians to ensure that there is never a *Cobell*-like lawsuit again.

Along with settling *Cobell*, the Secretary of Interior created a Commission on Indian Trust Administration and Reform. This Commission released its final report in December with a number of administrative and legislative recommendations. We hope today that the Deputy Secretary of Interior can shed some light on how the Department is implementing those recommendations.

With that, I want to welcome Mike Connor, the Deputy Secretary of Interior. Mr. Connor has direct oversight over the land Buy-Back

program and is responsible for making sure various agencies involved are all working together to get this important work done.

Mr. Connor, I believe this is your first time in front of this Committee since being confirmed by the full Senate. I want to thank you for being here today, as I am sure Assistant Secretary Washburn appreciates that you are here today. But the fact is, just for the record, I appreciate your work in previous capacities in government and with this new position that is still relatively new to you. You are more than capable of doing an incredibly good job at this. So we hope that you can shed some light on how the Department is implementing the recommendations that I just spoke of.

When Senator Barrasso gets here, he will be given the liberty to make his opening statement but—yes, he is here. Look at that. Senator Barrasso, I will turn the floor over to you.

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

Senator BARRASSO. Thank you very much, Mr. Chairman, for holding this important hearing. The Committee is well aware of the problems created by the magnitude and complexity of the issue that we are talking about, fractionation in Indian Country. The Buy-Back program is an unprecedented opportunity to address this issue. Last December, the Committee received testimony regarding a number of issues facing the implementation of this program. I look forward to hearing from our witnesses on what progress has been made since the time of plans for continued improvement.

So I welcome all those who are testifying today and thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chair Barrasso, for your comments. With that, Mike, I will give you the time. Know that your entire statement will be a part of the record. If you could hold your testimony to five minutes, it would be much appreciated. Go ahead, Mike.

**STATEMENT OF HON. MICHAEL CONNOR, DEPUTY  
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CONNOR. Thank you, Mr. Chairman, Vice Chairman Barrasso. I appreciate the opportunity to be here today.

I so appreciate your opening comments recognizing the work that we have done in this Administration to resolve overall a lot of the claims and litigation against the United States for mismanagement of trust resources over time. That has been a big focus, because we certainly want to turn the corner and get to a more cooperative working relationship with tribes and I think we have managed to turn the tide in that direction right now. But of course, there is a lot more work to be done, and we look forward to this.

I recognize certainly that this is not the Committee's first hearing on the land Buy-Back program, but it is certainly the first time I have been here as Deputy Secretary. I can assure you that it is one of my highest priorities in my responsibilities at the Department.

As you know, in recognition of the complexity and importance of the program, it was established in the Office of the Secretary with a program manager reporting to me. The Department also estab-

lished an oversight board, which I chair. While the small team of staff is dedicated to the success of the program, this oversight board, which includes of course myself, the solicitor, the Assistant Secretary of Indian Affairs, Director of Bureau of Indian Affairs and the Special Trustee for American Indians provides regular oversight and guidance to the program.

In 2010, Congress enacted the historic legislation that brought the *Cobell* litigation to a close. After decades of contentious litigation that affected virtually every aspect of the Department's relationship with tribes, the legislation opened up a new chapter by providing, among other things, the \$1.9 billion in funds you referenced to restore fractionalized lands to trust ownership. This fund will help reverse the impacts of the repudiated and the very unfortunate allotment and assimilation policy.

The magnitude of fractionation is enormous. There are more than 2.9 million trust or restricted fractional interests spread across more than 150 reservations that are owned by more than 243,000 individuals. On the charts you can see there is the Pine Ridge Reservation and the green, dark green and light green indicate the areas where the program has resulted in the purchase of fractionated interests that just shows you the magnitude on that particular reservation.

The program embodies the priorities set forth by President Obama's national policy initiative to build effective partnerships with American Indian communities and work more efficiently to find solutions to the challenges they face. Through ongoing collaboration with tribal governments and outreach to individuals, we will facilitate improvements to advance vital economic and social priorities and restore tribal homelands.

As Deputy Secretary, I am committed to this program and continuing an opening and honest dialogue with tribal nations and individual landowners. I would like to briefly highlight three areas that are in my written testimony.

First, consolidated land and what we have done so far. Thus far, the Buy-Back program has made more than 33,000 purchase offers to owners of fractional interests. With significant coordination with tribe, we have successfully concluded transactions with more than \$72 million in the last six months, restoring the equivalent of more than 203,000 acres of land to tribal ownership. As a result of these purchases, the program has also made contributions to the *Cobell* Education Scholarship Fund, which is managed by the American Indian College Fund, and our scholarship contributions so far exceed \$3 million.

Simply put, the program is now gaining substantial momentum, which is translating into tangible progress for both tribes and individual landowners.

Increased tribal involvement. Early in the development of the program, we recognized that tribal involvement was crucial to the success of the Buy-Back program. The agreements we have reached recently are a result of joint planning over many months. Our staff is working tirelessly with tribes in a collaborative process to develop agreements that will guide implementation on their reservations. Each agreement is a product of information sharing and



thoughtful discussions resulting in a tailored approach for each community.

I recognize that each tribe is unique and in many cases with special allotment statutes or histories. The success achieved so far is due in large measure to the insight and commitment from the many tribal leaders and staff that are working with us. I want to recognize their efforts and reiterate the value of their continued involvement.

In May, based on tribal input, the Department announced a schedule through 2015 for the continued implementation of the program that identifies 21 locations representing nearly half of all fractionated interests and half of all owners across Indian Country. Substantial land consolidation actions will occur on those reservations over the next 18 months, and we anticipate adding tribes to the current schedule. To date, to facilitate tribal involvement, the Department has entered into cooperative agreements or other understandings totaling more than \$4.8 million with 12 of those tribes.

Finally, national outreach to individuals. With respect to outreach, it is critical that Indian landowners are aware of the Buy-Back program, understand the opportunity to sell their fractional interests for the benefit of the tribal community, and have the assistance they need to make informed decisions and complete the process if they choose to sell. Effective outreach helps to advertise the program, stimulate land use planning, identify willing sellers, locate owners where whereabouts are unknown, address questions to determine the fractionated tracts tribes wish to consolidate.

The Department has expanded our natural outreach, given the landowners in Pine Ridge Reservation, for example, reside in all 50 States as well as in foreign countries. I recently hosted a listening session in Portland, Oregon to share information and hear from Indian Country and will continue to plan visits over the next several months.

Mr. Chairman, that concludes my statement and I am happy to answer questions on the Buy-Back program or any of the other subjects you mentioned.

[The prepared statement of Mr. Connor follows:]

PREPARED STATEMENT OF HON. MICHAEL CONNOR, DEPUTY SECRETARY, U.S.  
DEPARTMENT OF THE INTERIOR

## **I. Introduction**

Good afternoon, Chairman Tester, Vice-Chair Barrasso, and Members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) statement at this oversight hearing on "Improving the Trust System."

In 2010, Congress enacted historic legislation to bring to a close the *Cobell* litigation. After decades of contentious litigation that affected virtually every aspect of the Department's relationship with tribes, the legislation opened a new chapter by providing, among other things, a \$1.9 billion Trust Land Consolidation Fund (Fund) to restore fractionated lands to tribal trust ownership. This \$1.9 billion fund helps to reverse the impacts of the repudiated allotment and assimilation policy. That destructive policy resulted in the loss of approximately 90 million acres of tribal lands in less than 50 years. Although Congress repudiated that policy 80 years ago, its impact on nearly every aspect of tribal life—whether it be law enforcement, economic development or day-to-day governance—continues to be felt every day in tribal communities.

The magnitude of fractionation is enormous. There are over 2.9 million trust or restricted fractional interests spread across more than 150 reservations that are

owned by more than 243,000 individuals. Approximately 90 percent of the fractional interests are located within 40 reservations. The Pine Ridge Reservation alone accounts for over 8 percent of the purchasable fractional interests.

The Land Buy-Back Program for Tribal Nations (Buy-Back Program) is one tool that helps alleviate the impacts of fractionation.

Through purchases from willing sellers, the Buy-Back Program is transferring trust and restricted interests directly to tribes so that tribes can utilize the land. Thus far, the Buy-Back Program has transferred the equivalent of more than 203,000 acres of land to tribes. In the short term, much of the money paid to obtain the interests may be spent in these tribal communities. In the long-term, transferring millions of acres of land to tribes is aimed at strengthening each tribal community and generating economic and generational benefits to those communities. Tribal acquisition of fractionated lands “unlocks” those lands, making them available to support economic development to benefit tribal members. Moreover, as sales occur, the Buy-Back Program contributes part of the Fund (up to \$60 million) to the Cobell Education Scholarship Fund managed by the American Indian College Fund. This funding will help open doors and create opportunities for current and future generations of Native college students; contributions to the scholarship fund so far exceed \$3 million dollars.

## II. Implementation of the Buy-Back Program

The *Cobell* Settlement became final on November 24, 2012, following the exhaustion of appeals through the U.S. Supreme Court. Less than a month following final approval, the Department established the Buy-Back Program and published an Initial Implementation Plan. The Department engaged in government-to-government consultation on the Plan—with consultations in Minneapolis (January 2013); Rapid City (February 2013); Seattle (February 2013) and held numerous meetings with tribes and inter-tribal organizations. With the benefit of significant tribal input and involvement, the Program published an Updated Implementation Plan in November 2013.

In recognition of the complexity and importance of the Buy-Back Program, it was established in the Office of the Secretary with a Program Manager reporting to me. The Department also established an Oversight Board, chaired by me. The Oversight Board, which includes the Solicitor, the Assistant Secretary-Indian Affairs, the Director of the Bureau of Indian Affairs, and the Special Trustee for American Indians, provides regular oversight and guidance for the Program.

The Settlement’s unique attributes and ten-year timeframe distinguish the Buy-Back Program from many other Federal programs that have an indefinite lifespan. The parameters in the Settlement necessitate quick and expedient implementation at each location to maximize the number of locations and landowners that may participate in the Program.

We are working diligently to implement the Program at many locations. As of July 15, 2014, we have:

- Sent over 33,500 purchase offers with a total value of nearly \$300 million for four locations, including initial offers to landowners with interests at the Fort Belknap Indian Community (the offers provided have given more than 80 percent of the eligible landowners with interests at Pine Ridge and Rosebud an opportunity to participate in the Program);
- Transferred land to tribal trust ownership for three tribes, totaling the equivalent of more than 203,000 acres through purchases from willing sellers;
- Made payments to individual willing sellers totaling more than \$72 million (payments are deposited directly into Individual Indian Money (IIM) accounts typically within an average of five days of receiving a complete, accepted offer package);
- Additional offers are expected for at least four more locations by the end of the calendar year;
- Created initial mapping dataset for 51 fractionated locations and shared the same with 27 tribes;
- As of early June 2014, implementation expenditures for Buy-Back activities are \$13.8 million (some of these expenditures include one-time, up-front costs, such as mapping, equipment, and system updates):
  - Outreach—\$3.2 million;
  - Land Research—\$2.2 million;
  - Valuation—\$1.6 million; and
  - Acquisition—\$6.8 million (includes offer processing capacity for future years);

- Obtained independent, outside review of the Program’s appraisal methodology by The Appraisal Foundation;
- Launched a substantive website, [www.doi.gov/buybackprogram](http://www.doi.gov/buybackprogram), to provide information about the Buy-Back Program, especially for tribes and individual landowners;
- Expanded our Trust Beneficiary Call Center to answer questions, update owner contact information, and register “willing sellers;”
- Established policies such as flexible purchase ceilings for fractionated reservations to ensure that funds are not fully expended at just a few locations and that as many reservations as possible can benefit from the Buy-Back Program;
- Set a base payment amount of \$75 for submitting an accepted offer and a base payment of \$7.50 per acre for subsurface or mineral ownership interests with nominal or no value;
- Held webinars in cooperation with the National Congress of American Indians to educate landowners and tribal staff about the Program;
- Created and published cooperative agreement guidance and application templates;
- Developed a streamlined acquisition process, including an update to the deed based on feedback from individual landowners;
- Attended national and regional tribal events that include staff booths to meet with landowners and distribute informational materials; and
- To administer the Program, we have hired 57 full time federal employees to date, most of which are within the Office of the Special Trustee for American Indians, the Office of Minerals Evaluation, and the Bureau of Indian Affairs to perform outreach, land research, valuation, and acquisition activities.

### III. Tribal Involvement

Tribal leadership and involvement are crucial to the success of the Buy-Back Program. Secretary Jewell (and before her Secretary Salazar) strongly supports tribal involvement in carrying out the Program. In December 2012, with the release of our Initial Implementation Plan, the Department emphasized that it “hopes to enter into cooperative agreements with many tribes and take advantage of tribes’ ability to minimize administrative costs and improve overall effectiveness and efficiency of the Buy-Back Program.” In 2013, the Program sought to update its strategy to expand tribal engagement, and Secretary Jewell stated that the Department’s “productive working relationship with tribes and our commitment to landowner outreach will continue to be major driving forces of the Program.” The Assistant Secretary-Indian Affairs and I recently led a listening session in Portland, Oregon, to hear directly from landowners and tribes about their ideas and perspectives on the Program and our progress thus far.

The Program has communicated directly with nearly 80 tribes (28 with jurisdiction over the most fractionated reservations), including meetings with several on or near their reservations. We heard from Indian Country that all fractionated locations should have the opportunity to participate, not simply the locations with 90 percent of fractionated lands. As a result, the Program has pursued opportunities to include less fractionated locations in early implementation efforts, which will help us develop a comprehensive strategy for the purchase of fractional interests at as many less fractionated locations as possible.

We recognized that the Department cannot develop an implementation schedule without input from tribes. To expand tribal involvement, we held an open solicitation period from November 2013 to March 2014, requesting expressions of interest from the tribes exercising jurisdiction over the most fractionated reservations. As a result, nearly sixty tribes submitted a cooperative agreement application or letter of interest to the Program. The open solicitation facilitates increased tribal input on the timing and sequencing of Program implementation. The Department relied on this tribal interest along with other factors, such as degree of ownership overlap, geographic diversity, and appraisal complexity, to guide implementation of the Buy-Back Program. In May 2014, we announced a schedule through 2015 for the continued implementation of the Buy-Back Program that identifies 21 locations representing nearly half of all the fractional interests and half of all owners across Indian Country. The Department continues to implement the Buy-Back Program in a flexible manner and update its approach to reflect lessons-learned, best practices, and tribal involvement.

To date, the Department has entered into cooperative agreements or other understandings, totaling over \$4.8 million, with 12 tribes located in the Great Plains, Rocky Mountain, Northwest, and Western regions:

- Assiniboine and Sioux Tribes of the Fort Peck Reservation;
- Coeur D'Alene Tribe of the Coeur D'Alene Reservation;
- Confederated Salish and Kootenai Tribes of the Flathead Reservation;
- Confederated Tribes of the Umatilla Indian Reservation;
- Crow Tribe of Montana of the Crow Indian Reservation;
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana;
- Gila River Indian Community of the Gila River Indian Reservation;
- Makah Indian Tribe of the Makah Indian Reservation;
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation;
- Oglala Sioux Tribe of the Pine Ridge Reservation;
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation;
- Standing Rock Sioux Tribe

These agreements support the involvement of more than 49 full-time employees that are or will be employed directly by the tribes. More cooperative agreements will be announced soon.

All 12 tribes with cooperative agreements or other arrangements are conducting outreach activities because tribal leadership is critical in assisting landowners to make informed and timely decisions about purchase offers. Tribes are assisting with this critical task by using methods best suited to the needs of their communities. They are updating landowner contact information, notifying landowners of upcoming purchase offers, identifying willing sellers, and hosting various community outreach events. Four tribes are conducting significant land research to prepare the necessary information about the fractionated land to assist with determining the fair market value of the lands. Tribes have made helpful contributions related to this task, including mapping activities, provision of information about land use, collection of comparable sales information, and assistance with minerals evaluation. Three tribes are also conducting appraisals of tracts prioritized by the tribes for acquisition; they are actively working with the Department to finalize their products, which will serve as the basis for purchase offers to landowners.

In sum, each agreement is the product of information sharing and thoughtful discussions between a tribal government and the Department, resulting in a tailored approach for the specific needs of the tribal community. Although the Department is willing to run the Program without a formal tribal cooperative agreement, the Department will continue to pursue cooperative agreements with many tribes to implement the Buy-Back Program through a federal-tribal partnership, which will promote tribal ownership of the Program, minimize administrative costs, and improve overall effectiveness and efficiency.

#### **IV. Land Buy-Back Outreach Efforts**

It is a priority for the Department to work with tribal leaders to ensure that Indian landowners are aware of the Buy-Back Program, understand the opportunity to sell their fractional interests for the benefit of their tribal community, and have the assistance they need to make informed decisions and complete the process if they choose to sell. Effective outreach helps to advertise the Program, stimulate land use planning, identify willing sellers, locate owners whose whereabouts are unknown, address questions, and determine tribal priorities regarding what type of fractionated tracts tribes wish to have purchased. Tribal leaders and staff have a prominent role in explaining the Program, and their involvement is actively and financially supported through cooperative agreements.

We have expanded our national outreach given that landowners on the Pine Ridge Reservation resided in all 50 states as well as Canada, Germany, England, Italy, Qatar, Taiwan and the Philippines. Outreach has occurred at on-reservation and regional events across the country. Program staff regularly attends national and regional tribal events to meet with landowners and distribute informational materials. Outreach also includes key leadership from the Secretary's staff. As previously mentioned, I recently hosted a Listening Session in Portland, Oregon to share information and hear directly from Indian Country.

Public service announcements from Departmental and tribal leaders have been disseminated to tribal and local radio stations, and aired in partnership with the Indian Health Service. Each landowner receives a minimum of two postcards for each offer and materials and information are regularly updated on our website, which also includes an online Outreach Toolkit to help tribal staff and organizations communicate about the Program. We are constantly seeking ways to incorporate feedback and improve the Buy-Back Program.

To communicate widely, we have issued nearly 30 press releases, including op-eds published throughout Indian Country. Each announcement is distributed not only to the media, but also to each of the 150 tribes eligible to participate in the Program as well as nearly 100 tribal organizations to help disseminate news (such as the In-

dian Land Tenure Foundation and National Congress of American Indians). We have received coverage in more than 200 articles, including nearly 90 news outlets including the Associated Press, Indian Country Today, IndianZ, Native American Times, and Rapid City Journal. The Program has purchased advertisements in programs for national events, such as Gathering of Nations, and publication special editions, including Indian Country Today. Most recently, the Program placed advertisements in the Native Sun News, Lakota Country Times, Todd County Tribune, Mellette County News, and Bennett County Booster to highlight opportunities for Pine Ridge and Rosebud landowners.

#### V. Conclusion

The level of interest expressed by tribes over the past year demonstrates the importance of the Buy-Back Program and our collective desire for it to be successful. Transferring millions of acres directly into tribes' ownership will provide countless opportunities for this and future generations. Restoring tribal homelands is one of our highest priorities and these interests are almost entirely within existing Indian reservations. We appreciate the Committee's interest in the Buy-Back Program and look forward to answering any questions.

The CHAIRMAN. Thank you, Deputy Secretary Connor. I very much appreciate your testimony. Put five minutes on the clock, if that is okay, and we won't hold you to close to that as far as the questions go.

Today we are going to hear from the Garden City Group that is ready to start sending out final *Cobell* payments, once the final amounts are calculated by the Department of Interior and approved by the court. Those are the steps that have to be taken.

The Federal court has authorized final payments to proceed at the end of May. They made that authorization. Do you have any update, Deputy Secretary Connor, on how long it is going to take to calculate the payments?

Mr. CONNOR. Overall, I think we are looking at a process where we will be finalizing the information necessary to make the calculations with a goal, I think, of early fall, be in a position to give the information so that the payments can be made. So I think we are on the same page with all the plaintiffs and the Garden City Group, that that is the process and the schedule. Right now we are doing some verifications of some of the information that the plaintiffs have asked us to do, and that process is the final step, from my perspective, in making the calculations necessary to make the payments.

The CHAIRMAN. Was there a schedule laid out in the settlement?

Mr. CONNOR. I am not familiar as to whether or not there was a schedule initially laid out in the settlement itself. I do know it has been obviously a very complicated process. Our role has been to i.d., the class members, find the class, well, create the class members and then make the calculations. So that has been a long, involved process.

The CHAIRMAN. Okay. You talked about the Buy-Back program and some of the numbers you gave us on what has been done from a transaction basis. Can you describe how this process is going to be duplicated on other reservations? I assume that is the plan.

Mr. CONNOR. Absolutely that is the plan. We have been very active on three reservations so far. We have now, as of I think in the last week, made purchase offers on a fourth reservation, Fort Belknap in Montana. So we are moving forward expeditiously, I think, overall. We are intending to make offers, significant numbers of offers on four more reservations by the end of the year. The

bottom line, though, is that we need to expand this and work in parallel across a number of reservations, if we are going to ensure that in the ten-year period we expend all the available resources, which is our goal, to make sure we use all those resources.

The CHAIRMAN. Right. And get the problem solved. Do you have the resources to be able to, currently to be able to work at multiple reservations at the same time?

Mr. CONNOR. The capacity issue that we see from our perspective is really the appraisals themselves. Right now I think we are in a good position to be able to meet the program time frames. But I think to feel more comfortable than we do today, we are going to have to address the capacity issue that exists with the appraisers. So we need to hire some additional appraisers, and that is in the works. We are looking at our ability to supplement our own resources with contracted resources through the appraisal process.

We are certainly making use of the existing appraisals that are available on a number of reservations and making use of tribal capacity through our cooperative agreements. That I think is the factor that we are most concerned about in trying to aggressively address. We have done a lot of mapping activities, we have mapped 50 reservations. We feel in a good position. We have shared that information with 27 or 28 tribes who are interested. So we are moving forward on multiple fronts now to allow the priority, working with tribes on their priority acquisitions. So we have to deal with the appraisal process, which I think is a first priority.

The CHAIRMAN. Just from your assessment, honest assessment of where you are, do you feel good where you are right now as far as the *Cobell* settlement goes?

Mr. CONNOR. I feel with the progress we have made over the last six months that we are in a good position. But it is going to take constant vigilance, and it is going to take addressing those resources constraints right now. Quite frankly, I feel better than I did when I walked into this job four months ago. My first two weeks I spent a lot of time on this program. I thought I would spend substantially more time than I have had to do in the last couple months. That is because I think as we have turned the corner, started making substantial offers, people see the progress being made and how the program can work. I think we are getting more enthusiasm and more participation now.

The CHAIRMAN. You talked about the scholarship fund. You said there is about \$3 million you have put in it so far. It will be capped at \$60 million. Do you think that cap will be reached?

Mr. CONNOR. Once again, I think we are in a position that we will be able to reach that cap.

The CHAIRMAN. Okay. You have heard pretty caustic concerns from tribes that the cooperative agreement negotiation process is slow, if you haven't heard it, they are telling us that. And the tribes are more familiar with a process called the 638 contracting process. Many tribes have advocated to Congress to make that change to allow 638 contracting. And in fact, there have been bills introduced to do exactly that.

Can you state whether 638 contracting would make the program run more smoothly, or would it make things more difficult?

Mr. CONNOR. I think there are unique factors about the Buy-Back program that need to be considered in the context of looking at 638 contracting. As a threshold matter, I think more contracting, more actions consistent with self-determination and self-governance are the ways that we are going to improve carrying out our trust responsibilities to the tribes. So as a general matter, we are strong proponents of moving even further in that direction.

Having said this, this is a ten-year program on which we are having activities on individual reservations in the 12 to 18 month time frame with a 15 percent administrative cap on the indirect costs that are associated with the program. So we look at it as, I think if we are going to move in the direction of self-determination, what are we going to do about the 15 percent cap. We have 150 reservations that are eligible for the Buy-Back program. Taking the 130 which have negotiated different self-determination contracts, the indirect cost rate is on average taking all those 130 reservations, 27 percent.

So there is a difference there already. We think there are certain aspects of the program, and we have tried to address this in a cooperative agreement program, that tribes are much better at than ours, certainly the outreach, the priority planning aspects of the program. Some tribes are helping us out with the appraisal process. Other tribes have elected not to have any agreement with the Department. There are certain other efficiencies of scale that we have gained, certainly, in making the acquisitions and doing the deeds and making the offers and getting that in the system and transferred into trust, tribal trust, very quickly. It is unclear whether or not we will still have those efficiencies of scale if we go completely to the self-determination route.

So at this point in time, in the context of considering those bills, those are the factors that we are going to be looking at if we are asked to come back and testify on any specific bills.

The CHAIRMAN. Thank you. Vice Chairman Barrasso?

Senator BARRASSO. Thank you, Mr. Chairman. Just following up on your line of question, last December Deputy Assistant Secretary Roberts testified regarding the Buy-Back program, that some individuals never sell their interests. So fractionation may remain an issue on some reservations.

Your written testimony indicated that the department has pursued opportunities at some of the reservations that are less fractionated. The efforts will then help in developing a comprehensive strategy for purchasing fractional interests, and you talked about efficiencies of scale and making the contracts. So the question is, can you tell us what types of strategies have been developed so far, how those have been working and what your thoughts are?

Mr. CONNOR. Certainly I think the most significant strategy is the mass appraisal valuation process. And we work with the Trust Institute to ensure that the mass appraisal process was validated and improved, based on that interaction. So I think that has been the most significant strategy that has put us in a position to not only focus on the 40 most fractionated reservations, so we are in consultation with the tribes, all 150 who are eligible wanted to en-

sure that we could put in place a process to ensure that we could work on those communities and work on those reservations.

So we instituted a purchase ceiling process, where we assess what is likely to be the magnitude of the acquisition costs on the reservations, so that we could ensure that we can move to the maximum number of reservations. I think overall, through the cooperative agreement process, we have I think, both your statements are indicative of the problems that we have had in standing up the cooperative agreement process. I think most recently through the improvements that we have made in templates and setting expectations and working and consulting with individual tribes, I think we are expeditiously moving faster in developing cooperative agreements. I think we have seen that in the last couple months, where we have greatly improved our ability to move forward with tribes in partnership.

So there are a lot of improvements that I think help address the issue that you raise.

Senator BARRASSO. Senator Tester's first question had to do with the Garden City Group. As Jennifer Keough, who is here, a witness on our next panel, indicated in her written testimony, that with the *Cobell* settlement payments not being made, that the Interior Department, as you said, has not really been able to first calculate the total amount owed. She noted it, there were about 239,000 individuals who have been waiting for their check. Is that an accurate assessment in your mind, as to the number, the size, the expanse of how big an issue we are facing here? And then I was going to ask for your thoughts on the realistic approach of getting that by the fall.

Mr. CONNOR. I think that number that you quote sounds like it is in the ball park. I can certainly verify that for the written record, our expectations about that. I think we are in a realistic position to move forward in the fall with those payments. There has been a lot of process and there have been a lot of factors. We have had a role, I think the appeals process, who is part of that class, that that process has gone on in front of the special master and the court has certainly been a factor in the time frames. Now, certainly in the validation as we go back and ensure that our records are accurate, it has been a time-consuming process.

Right now, we are at the tail-end of that approach. I think we have identified also the overall resources available for distribution which is a critical part of the calculation. So I am going to express confidence that we are going to be in a position to do our part, which will allow those folks who are responsible for the actual payments to do their part and get them out by this fall.

Senator BARRASSO. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Heitkamp?

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman.

Just a couple of points. Obviously Mandan, Hidatsa and Arikara Nation is at the center of an oil boom in North Dakota. In fact, approximately a third of all production in North Dakota actually occurs on the reservation. This issue of fractionalization is critically



important in terms of getting access to the surface for various reasons that you would need to facilitate energy development which a lot of folks are interested in. I think you have some folks who are very interested in the Buy-Back program, but they aren't going to sell you their minerals. Certainly not there.

So I want to see what you are doing or hear what you are doing to try and prioritize those areas where economic development by reducing fractionalization could be a key outcome and what your relationship is. I know you just recently signed an agreement with Standing Rock, but what your relationship currently is with Mandan, Hidatsa and Arikara.

Mr. CONNOR. I don't believe we do have a cooperative agreement with Fort Berthold right now. So quite frankly, I was up there about six weeks ago, and we had a great discussion about the activity, the oil and gas activity that was going on, the value of it, as well as the issues associated with that rapid pace of development. We actually did not get into much of a discussion on the Buy-Back program. I was surprised when I walked into their tribal headquarters and saw the map that was immediately in the foyer area, and I hadn't realized how fractionated and how a lot of that particular reservation had been.

So I think it is one of those situations right now, and that is a factor in where we are looking at moving toward cooperative agreements and prioritizing communities that we are going to work with. And the 21 that we have done, it is the level of fractionation which certainly Fort Berthold is up there, it is the level of interest by the tribe, it is the contiguous nature with other areas, what we can do, evaluations that are similar and get some efficiencies of scale. And right now I am not quite sure where we are on their interest level.

Senator HEITKAMP. It is complicated, because a lot of what we need to do in order to reduce flaring, what we need to do in order to move product depends on having access to the surface, for in some ways temporary access to the surface. So fractionated interests makes a big difference in terms of the ease of actually moving forward.

I want to talk a little bit about cooperative agreements and where I guess I applaud that effort and applaud the consultation that needs to go into those cooperative agreements, one of the things we hear back is that they have found that the negotiating process for a cooperative agreement is complex and can be burdensome. So I want to know what you are doing to improve the process so that people don't think, well, we will spend days and hours doing this and come back and nothing will happen from it, and how we can get more of these agreements done quicker, so that we can begin the buy-back process even that much faster.

Mr. CONNOR. We have provided templates of our cooperative agreements that we have in place. The staff has had a webinar which I think was pretty well attended.

Senator HEITKAMP. Can you tell me, are those kind of take it or leave it or are those negotiable?

Mr. CONNOR. They are very much negotiable. We have tried to set a framework of expectations. We have said that we expect they are going to be in the neighborhood of \$500,000. Part of that is be-

cause we think estimate-wise, given the activities that we foresee being part of that cooperative agreement that the cost part of it is trying to stay within our 15 percent overall administrative cost for the program itself.

Having said that, there is a couple of hundred thousand dollars either way on several of those agreements, because of the unique circumstances that exist on the reservations for which we have cooperative agreements. Any activities, some tribes don't want to have part of the valuation processing, I think we have three now who are assisting us with the appraisal process. So they are not cookie cutter. We have tried to set expectations and put a framework around it but very much open to a negotiation process.

Senator HEITKAMP. One final question. When you are looking at actually finding absentee landowners, what has been your experience as you look at maybe one owner wanting to sell and not being able to find the other three that have an interest?

Mr. CONNOR. I know that for efficiency purposes, we are focusing on those landowners that we identify that are available, that we know are receiving the offer. And on the landowners that their whereabouts are unknown, I don't think we are focusing on them at this point in time as an efficiency measure. But I can supplement that for the record.

Senator HEITKAMP. I guess my point is, there might be one of these interests where you have one person who is interested in selling. That might be something that is critically important for the tribe to consolidate of the purposes of economic development or further build-out of tourism, whatever it might be. I think it is important that we don't simply hit a hurdle of an absentee landowner and then back away from that process.

Mr. CONNOR. I think that is where the cooperative agreements and the relationships who have tribes, that the outreach and their priorities for acquisition, that we are going to rely on in focusing the resources of the program.

Senator HEITKAMP. Okay, thanks, Mike.

The CHAIRMAN. Senator Franken?

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

Senator FRANKEN. Thank you, Mr. Chairman. It is good to see you again, Deputy Secretary Connor. I understand the need to prioritize the most fractionated reservations and I am glad that the Fond du Lac Reservation in Minnesota, that their band is on the list of tribes that the Department plans to focus on. But then I think about all these tribes that aren't on the list, Bois Forte, for example, their band is also in Minnesota, has 92 highly-fractionated tracts. I realize that is dwarfed by some other tribes, but 92 fractionalized tracts are a lot of fractionalized tracts. It is a lot of land that is extremely difficult to manage.

Is there a plan to help any of these tribes that are outside the top 40 list?

Mr. CONNOR. Absolutely. I am not sure if on the Fond du Lac, I am not sure Fond du Lac is on the list that we have right now. We will have to double check. We will clarify that.

Senator FRANKEN. They are in the 40. Well, okay, they are not expected to start this year.

Mr. CONNOR. That is correct. The list we put out was for substantial land consolidation activities through 2015, as of today, or as of May when we made the announcement. So in answer to your question, we are not focused on just the top 40. Geographic diversity was one of the factors that we were looking at and we are looking at opportunities for lessons learned from some of the less fractionated reservations.

So really right now, we are looking at capacity issues. As we talked a little bit about earlier, I think appraisals are the most significant issue with respect to capacity right now. We are trying to add additional appraisal capacity, whether it be through tribes themselves, through direct hires that we make or contracted resources. So what we have talked to a lot of tribes about is, we have significant expectations that we will add to that list of 21 even for activity to begin at significant levels through the end of 2015. So because, I don't know about the specific tribes you referenced, but I do know there is an ongoing interaction, if those tribes are interested. We are trying to see if we can marshal the resources to add them to the list of 21 and begin activity within this next 18 month time frame.

Senator FRANKEN. Okay, just clear this up. Fond du Lac is one of the 40. But it is not going to be addressed, I guess the top 21 are to be done, their work will be done by the end of 2015. When do you expect the others to be taken up?

Mr. CONNOR. I think we have about eight years left. So to reiterate, they are not part of the 21 right now.

Senator FRANKEN. Does it count if they are in the 40, when I could I tell Chair Karen Diver that you are going to be addressing the rest of the top 40?

Mr. CONNOR. Well, I just got passed a note, we are having a meeting with the Midwest Tribes on August 5th. I think the dialogue is going to be about whether or not we can add some of those tribes into the present list to begin activity even before the end of 2015. Beyond that, obviously as we move through this process and maximizing the accomplishments for the resources we have, the top 40 are going to be absolutely critical that we ensure that we get there. I don't have a specific time frame for you or Karen at this point in time, but it is going to be a high priority overall in the program.

Senator FRANKEN. You talked about some lessons learned already. The Department has worked with just three tribes thus far and purchased, I think over \$72 million of fractional interests. What lessons have you learned from this initial experience, from these tribes? And will that help you pick up the pace of doing this and do you think you will be able to fully implement the terms of the settlement in the window, in the 10-year window?

Mr. CONNOR. Yes, Senator, I think we are in a good position. We are not in an over-confident position that we are going to meet the time frames, and we have a lot of work to do. So I think the lessons learned is that there is assistance that we can get from certain tribes with respect to the appraisals, and we are going to continue to try and maximize that assistance as we move forward with our

cooperative agreements. I think we are getting in our dialogue with the tribes and using the aspects that they are much better suited to carry out the program than we are, which is that outreach and those priorities and identification of certain tracts. I think we are recognizing the value that exists there. I think we are getting to our cooperative agreements quicker now. So I think that we are positioning ourselves better so that the issue just becomes more and more about capacity building. That I think, the contracting aspect of it could be very helpful but it just hasn't come to fruition. We are hoping that by early this fall we may be able to look at substantial capacity additions to that mechanism.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Secretary Connor. I appreciate your testimony and your response to the questions here today.

I have a few more questions that revolve around the Commission on Indian Trust Administration and Reform, but I will do those in writing to you, and any other member that has further questions may do the same.

With that, I will release you. Thank you very, very much. We appreciate your participation in this hearing.

Mr. CONNOR. Thank you, Mr. Chairman, Vice Chairman, Senator.

The CHAIRMAN. Now I want to invite up witnesses to the second panel. We are going to hear from Carole Lankford, Vice Chair from the Confederated Salish and Kootenai Tribes. And we will hear from Susan Waukon, a member from the Ho-Chunk Nation's Legislature out of Wisconsin. Next we will hear from Mr. Helo Hancock, the Legislative Director for the Coeur d'Alene Tribe of Idaho. Finally, we are going to hear from Ms. Jennifer Keough, who is the Executive Vice President of the Garden City Group, which is a court-appointed administrator of *Cobell* payments.

I want to thank you all for being here, and being willing to testify. We will start with you, Carol, with your testimony. But before you start, I want to say thank you, thank you for your commitment to the Salish and Kootenai people, and thank you for making the long trek from Montana out here. With that, you may begin, Carol.

**STATEMENT OF HON. CAROL LANKFORD, VICE-CHAIR,  
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE  
FLATHEAD RESERVATION**

Ms. LANKFORD. Thank you very much. Good afternoon, Chairman Tester, Vice Chairman Barrasso, and Committee member Heitkamp.

My name is Carol Lankford. I am Vice-Chair of the Confederated Salish and Kootenai Tribes in Montana. CSKT is a strong advocate of tribal self-governance and native homeland restoration. I am thankful that the Committee and others in both chambers of Congress are listening to the concerns of tribal leaders, respected elders and Indian communities regarding the land Buy-Back program.

Our aboriginal territory was over 20 million acres. In our treaty of 1855, we ceded almost 19 million acres of land to the U.S. In return, the Federal Government gave us a commitment that we would have exclusive use of the remaining 1.3 million acre Flat-

head Reservation. Within 50 years, the U.S. broke its work and opened our reservation for non-Indian homesteading.

By 1930, we were a minority landholder on our own reservation, with only 30 percent of those 1.3 million acres still being Indian-owned, a fact that should shock the conscience of every American. Today, following aggressive land purchase efforts led by tribal leadership, we now own 63 percent of land within our reservation. Most of Indian Country greeted the fractionated interest purchase program of the *Cobell* settlement with open arms because of what a huge problem fractionated land created on our reservations.

We are grateful to be one of the first tribes to enter into a land buy-back agreement with Interior under the settlement. However, given the hoops we had to jump through and the dozens of rewrites we had to negotiate, combined with what we are hearing from other tribes, we are concerned about the implementation of this important program. While the CSKT do have a signed cooperative agreement, we have yet to be able to purchase even one fractionated interest due to the cumbersome program implementation and design.

Details regarding program implementation difficulties that the CSKT have encountered can be found in my written statement. The short version is that Interior has implemented needless changes and imposed unnecessary requirements without long-term consideration of the consequences of their actions. Interior is also not responding in a timely manner even when required to do so.

We have a number of recommendations for legislation and program improvement. There are 40 tribes who have 90 percent of the fractionated interest. Allow them a full term of the *Cobell* settlement to acquire fractionated interests. Do not limit tribes to a 12 or 18 month cooperative agreement. The issue of fractionated interest ownership was created over decades and will not be resolved in 18 months.

Allow tribes to compact or contract the land Buy-Back program under the Self-Determination Act and/or the Tribal Self-Governance Act. Allow tribes to invest the land acquisition fund and earn interest while managing the program to enable that tribes purchase more fractionated interests.

Assist tribes to implement the land Buy-Back program of requested. Time and time again we have learned that tribes want choices and options. Some tribes may play a larger role in the program. Some may not. There are two bills pending in Congress right now intended to fix problems with the program, one by Senator Walsh and Congressman DeFazio and one by Congressman Daines. Both bills contain good provisions. Most importantly, both bills will allow tribes to utilize the Indian Self-Determination Act and the Tribal Self-Determination Act to implement the land Buy-Back program on their reservation.

We have confidence that Congress will choose the provisions from both bills that will work best into one consolidated bill. It will be important to enact such a bill quickly. In my written testimony, I have indicated that the Daines bill extended the period for an additional five years and thought this made sense. We now understand that the Walsh-DeFazio bill allows the money to be spent until it is gone, essentially extending the period of land purchase for as

long as it takes until the money, including the investment returns, runs out. That is a very good idea.

The Department of Interior has held numerous listening sessions around the Country. However, they have been slow the change the program implementation and design. The opportunity still exists to make the land Buy-Back program one of the most innovative and successful restoration programs in the Department of Interior's history.

Please continue to ask tribal leaders what will improve the program and also engage DOI in implementing the program changes requested by tribal communities.

Thank you for the opportunity to testify before the Committee. Your leadership and attention in this matter is greatly appreciated. I look forward to any questions that you may have.

[The prepared statement of Ms. Lankford follows:]

PREPARED STATEMENT OF HON. CAROL LANKFORD, VICE-CHAIR, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

Good afternoon. I want to thank Chairman Tester for convening this hearing on one of the most important opportunities in Indian Country, namely the Department of the Interior (DOI) Land Buy Back Program (LBBP). My name is Carole Lankford. I am the Vice Chairman of the Confederated Salish and Kootenai Tribes in Western Montana. Our Tribes are strong advocates for Tribal Self Governance and for native homeland restoration.

Perhaps to understand its importance I should quickly relay to you the history of our land base. Our aboriginal territory was over 20 million acres, a significant amount of what is now western Montana and areas in surrounding states. In our Treaty of 1855 we ceded almost 19 million acres of land to the U.S. in return from a commitment of the U.S.—in a treaty ratified by the United States Senate—that we would have the exclusive use of the remaining 1.3 million acre Flathead Reservation. Within 50 years of the signing of that treaty the US broke its word and opened our reservation for non-Indian homesteading. By the 1930s we were the minority land holders on our own reservation with approximately 30 percent of those 1.3 million acres still being Indian owned. That fact should shock the conscience of every American. Today, following aggressive land purchase efforts by CSKT Tribal leaders, we now own approximately 63 percent of the land within the Flathead Reservation. So today, being before you, I am thankful that Montana's Congressional Delegation is listening to the concerns of Tribal leaders, respected elders and the Indian community in regard to the Land Buy Back Program.

Most of Indian Country celebrated when the *Cobell* lawsuit was settled and finalized. As the members of this Committee know, due to the allotting of Indian reservations and the many times whereby allotments have divided and subdivided further and further for each generation of descendants of the original Indian allotment holders, there are large parts of reservation lands with fractionated parcels that cannot be used for home building or economic developments. Therefore, most of the Tribal Nations greeted the fractionated interest purchase program of the larger *Cobell* Settlement with open arms.

We are grateful to be one of the first tribes to enter into a land buy back agreement with the Department of the Interior under the *Cobell* settlement. However, given the hoops we had to jump through and the dozens of rewrites we had to negotiate, combined with what we are hearing from other tribes, we are concerned that the implementation of this important program will not achieve the intended result, which is to reduce the number of fractionated interests.

While the CSKT do have a signed cooperative agreement for Land Buy Back, we have yet to be able to purchase one fractionated interest. We believe this is due to cumbersome program implementation and design.

Some of the program implementation errors that the CSKT are experiencing are as follows:

- 1.) Encouraging time limited Cooperative Agreements with a limited number of purchase offers. It can take up to six months to achieve a standard mortgage from start to finish. Yet, Indian land owners are asked to make a decision to sell trust interests in a 45 day period. This short window for decision-

making will not encourage sales to the Tribal government. This short window does not honor nor acknowledge the Tribal attachment to Indian land. This “critical decision” in creating such a short timeframe for willing sellers to make a decision to sell, may have a detrimental and irreversible negative impact on the program. We have been told that the 45 day timeframe for making a purchase decision will be modified, if necessary. That probably is a good idea. We have only 11 months left on our cooperative agreement and are limited to three purchase offers or what DOI calls waves (groups of purchase offers). We are concerned that this grouping especially on a reservation like ours where lakeside land will be valued much higher than elsewhere is going to be problematic. Interior wants to get in and get out, do appraisals only once, and offer all sales prices at once. It is not going to work.

- 2.) Why would the DOI modify the appraisal process for Land Buy Back? Our Tribes are experiencing more delay, new reviewers, new required appraisal language, and new requirements for appraisals. The validity of the appraisal (or appraisal age) should be lengthened if local market conditions support it. Instead, the DOI initiated the Land Buy Back program with a new “shortened” shelf life for appraisals. We and other Tribal leaders have expressed this concern over shortened appraisal shelf life to the Department of the Interior numerous times.
- 3.) The CSKT were faced with a requirement for BLM mapping of fractionated interests. This would be a requirement of the appraisal and of the determination that a fractionated interest was purchasable. This has never been a requirement for past fractionated purchases under the Indian Land Consolidation Act. Why impose new or changed standards now? The program is cumbersome enough without layering new requirements on the process and on Tribal governments. Even after just meeting with DOI reps we are not sure if the failure to have a BLM map would prevent the acquisition of a Tribal priority interest. BLM rarely comes out to the reservation and they rely on other data such as TAMS. If TAMS info conflicts with BLM data and BLM will not then issue a map, a priority acquisition might go by the wayside. That would be very troubling.
- 4.) We are the only tribe with a provision in our agreement requiring the review appraisers to review an appraisal and respond within five days. We have sent over 60 appraisals to them and they never got back to us on a timely basis so now we have to update the appraisals. They can't keep up with their own agreed to timeframes.

### Recommendations

Our recommendations for legislation and program improvement are as follows:

- There are forty (40) Tribes identified by the DOI who have 90 percent of all fractionated interests in Indian Country. Allow them the full term of the Cobell settlement to acquire fractionated interests. Do not limit Tribes to a 12 or 18 month Cooperative Agreement. The issue of fractionated interest ownership was created over decades and it will not be resolved in 18 months. Allow participating Tribes, at the least, the full settlement period to purchase fractionated interests with the initial purchase ceilings (\$) allocated to them. This is reasonable if a long term solution and true reduction of fractionated interests is desired.
- Pass legislation to allow Tribes to compact the Land Buy Back Program under the Indian Self Determination Act and/or the Tribal Self-Governance Act.
- Allow Tribes to contract or compact the Land Buy Back Program.
- Allow Tribes to invest the land acquisition funds while managing the program to enable the Tribes to purchase more fractionated interests. The CSKT believe that our initial purchase ceiling will not be sufficient if all willing sellers decide to sell. We should be able to invest the funds and earn interest and then use that to purchase more fractionated interests during the program. That is also reasonable and a business approach to the problem.
- Assist Tribes to implement the Land Buy Back program if requested. Time and time again we have learned that Tribes want choices and options. Some Tribes may play a larger role in this program. Some may not. There is a slim chance that the funds will be spent if the program implementation is narrow, as it presently is. We support spending the funds and restoring the fractionated interests to the control of the Tribes.

There are two bills pending in the Congress right now intended to fix problems with the Land Buy Back program. One by Senator Walsh and Congressman DeFazio and one by Congressman Daines. Both bills contain good provisions. Most importantly, both bills will allow tribes to utilize the Indian Self-Determination Act and the Tribal Self-Governance Act to implement a land buy-back program on their reservation. The Daines bill extends the time period for the implementation of the land buy-back program from 10 to 15 years. It also allows payments to be made to tribal governments to carry out contracts or compacts and authorizes the use of interest earned on such payments to be used by the tribal government to purchase fractionated interests. It further requires annual reports to Congress (which might be a good way to hold Interior accountable) and consultation. The DeFazio-Walsh bill allows investment of the trust land consolidation funds in an interest bearing account and also contains a provision whereby the funds are invested by the Secretary and then tribes can use them to purchase fractionated interests until they are gone. While DeFazio-Walsh does not explicitly strike the 10-year availability limitation language it does away with the availability limitation timeframe entirely by specifying that the funds must be invested into an interest-bearing account and that once invested can only be used for the intended purpose (without any timeframe limitation). On the one hand we would not wish to see further delays by Interior if they are not forced to act within a specified timeframe but on the other hand extending the timeframe to 15 years in the Daines bill does not ensure that funds would not revert to the Treasury if they have not been fully expended. DeFazio-Walsh says the funds can only be used for the intended program and will not be returned to the Treasury. The notion of any of these funds possibly reverting to Treasury is counter to the purpose of the Fund and preventing that possibility would be a good idea.

Senator Tester and Committee Members we commend you for listening to Tribal leaders.

The DOI has held numerous listening sessions around the Country and we believe their consultation has been extensive. However, they have been slow to change the program implementation and design. There is still time to make the Land Buy Back Program one of the most innovative and successful land restoration programs in DOI history.

Please continue to ask Tribal leaders what will improve the program. Engage the DOI in implementing program changes requested by the Tribal communities. We have confidence that the Congress can pick and choose the provisions from both bills that will work best into one consolidated bill. It will be important to enact such a bill quickly.

Thank you.

The CHAIRMAN. Thank you, Carol. We appreciate your testimony. Susan Waukon, you may have the floor.

**STATEMENT OF HON. SUSAN WAUKON, REPRESENTATIVE,  
HO-CHUNK NATION LEGISLATURE; ACCOMPANIED BY  
GEORGE WATERS, PRESIDENT, GEORGE WATERS  
CONSULTING SERVICIE**

Ms. WAUKON. Good afternoon, Chairman Tester, Vice Chairman Barrasso and members of the Committee. My name is Susan Waukon and I am a District 1 legislator from the Ho-Chunk Nation of Wisconsin. I represent most of the northern half of Wisconsin. I appreciate the opportunity to provide testimony on behalf of the Nation on Improving the Trust System in the Department of the Interior's land Buy-Back program.

The Nation's tribal enrollment is 7,500 members and our tribal headquarters is in Blackwater Falls, Wisconsin. A series of Federal actions reduced our land base from 10.5 million acres to 11,538 acres, located throughout 25 counties in Wisconsin, Illinois and Minnesota.

The nation participated in the Indian Land Consolidation Program, the predecessor to the Buy-Back program. In 2009, the nation adopted a land consolidation code to prioritize the nation's



land acquisitions. The nation has also developed a probate code, assumed responsibility for the land title records office and is in the process of assuming control over surface leasing under the recently-enacted HEARTH Act.

The nation is listed as 65th in the program's implementation plan and is about to finalize a cooperative agreement to participate in the program. Based on our experience and discussion with the Department, the nation recommends the following changes to improve the program.

One, develop rules for reallocation of purchase ceilings. The rate of acceptance for offers made is now about 30 percent. Even if the rate were to jump to 40 or 50 percent, this would still leave hundreds of millions of dollars in need of reallocation.

The nation strongly recommends that the program develop and publicize guidelines for reallocation of purchase ceiling funds as soon as possible. Two, authorize tribes to contract program functions and invest program funds. We as Indian tribes should be allowed the option to manage program funds under the Indian Self-Determination Act. This would also allow the funds to be invested to earn interest, thereby enlarging the amount of funds to be used for land purchases.

Legislation has been introduced in the House and in the Senate addressing tribal contracting of the program. But there are major differences in these bills, and the nation urges the Committee to work with the House Subcommittee on Indian and Alaska Native Affairs to find the fastest way to ensure these changes are enacted into law.

Three, deploy additional resources to engage with those tribes that are not on the top 40 list. Other tribes that are not in the top 40, like the Nation, have the managerial capacity to begin making offers to landowners. At the end of the program's effective life, success will be measured by the total number of fractionated interests purchased and the total amount of acreage reconsolidated in tribal ownership.

I don't have to remind anyone here that in all likelihood, this is our last chance, both at the Federal level and in Indian Country, to make a major dent in Indian land fractionation. We need to make sure that we make the most out of this opportunity.

The nation believes Indian tribes can do a better job than the U.S. Government in managing land and natural resources. The nation is one of a small number of tribes nationwide and the first in our region to contract the Bureau of Indian Affairs LTRO under the ISDEAA, which has allowed the nation to access the TAAMS system and generic title status reports without having to rely on the BIA.

Performing the LTRO function also allows the nation to approve leases, permits and process land acquisitions more quickly than relying on the BIA. The nation is also underway in assuming control over surface leasing under the recently-enacted HEARTH Act, which will expedite the approvals formally required of the Federal Government. Reducing the Federal bureaucracy in these areas will allow the nation to move more quickly on economic development opportunities that will in turn enhance the quality of life for our members.

We encourage the Committee to pursue proposals that have practical benefits to tribes such as S. 165, the Indian Trust Asset Reform Act, which would give tribes a direct role in the management of their trust resources and transition the Office of the Special Trustee functions under a single administrative umbrella.

The nation strongly supports this bill and urges the Committee to expedite its consideration of the bill in the remaining months of the 113th Congress.

This concludes my testimony. I would be happy to answer any questions.

[The prepared statement of Ms. Waukon follows:]

PREPARED STATEMENT OF HON. SUSAN WAUKON, REPRESENTATIVE, HO-CHUNK  
NATION LEGISLATURE

### **Introduction**

Good afternoon, Chairman Tester, Vice Chairman Barrasso, and members of the Committee. My name is Susan Waukon and I am pleased to provide this testimony on behalf of the Ho-Chunk Nation of Wisconsin ("Nation") on improving the trust system and the Department of the Interior's Land Buy-Back Program ("Buy-Back Program"). I serve as an elected member of the Nation's Legislature and represent District 1, which includes most of the northern half of the State of Wisconsin.

The Nation, known as "People of the Big Voice," has a tribal enrollment of 7,500 members and our tribal headquarters is located in Black River Falls, Wisconsin. Forced removals and land cession treaties with the federal government greatly reduced what was once more than 10.5 million acres of the Nation's aboriginal land. The Nation today owns approximately 11,538 acres of land situated throughout 25 counties in the states of Wisconsin, Minnesota, and Illinois. Using its own funds, the Nation purchased approximately half of this land.

The Nation has a long history of reacquiring land and purchasing fractionated interests in land. For several years, the Nation participated in the Indian Land Consolidation Program, which was the predecessor to the Buy-Back Program and based in Ashland, Wisconsin. In 2009, the Nation formally enacted a land consolidation code that prioritizes the Nation's land acquisitions. The Nation has also developed a tribal probate code, has assumed responsibility for the Land Title Records Office, and is in the process of assuming control over surface leasing under the recently-enacted HEARTH Act.

The Nation is listed as 65th in the Buy-Back Program's implementation plan. The Nation is currently developing a cooperative agreement to formally participate in the Buy-Back Program.

### **Recommendations for the Buy-Back Program**

Based on our preparations and work with the Buy-Back Program to date, the Nation has several recommendations to improve the program.

#### *1. Develop Rules for Reallocation of Purchase Ceilings*

To date, the Buy-Back Program has focused most of its resources on those tribes with the largest purchase allocations under the program's implementation plan. The Nation agrees that those tribes with the highest rates of fractionation should benefit from early deployment of program resources.

The Nation is very concerned, however, that unless the Buy-Back Program quickly develops and implements rules governing the reallocation of purchase ceiling funds, much of the land consolidation fund will revert back to the U.S. Treasury and will be forever lost to Indian country. Four years into implementation, the Nation understands that of the offers that have been extended on the reservations where the Buy-Back Program is active, the acceptance rate has been approximately 30 percent. This acceptance rate may increase as the program learns more and becomes more efficient, but we believe a sense of urgency needs to accompany future efforts.

Even if the acceptance rate were to eventually increase to 40 or 50 percent, this would still leave hundreds of millions of dollars in need of reallocation to other tribes. It would not be feasible to reallocate these funds near the end of the ten year life of the program. Rather, Buy-Back Program managers need to make these decisions much sooner to afford the recipients of reallocated funds a meaningful opportunity to spend the money.

If the current acceptance rate of offers holds, it is conceivable that land purchase funds may need to be reallocated more than once. For all of these reasons, the Nation strongly recommends that the Buy-Back Program develop and publicize guidelines for reallocation of purchase ceiling funds as soon as possible.

### 2. Authorize Tribes to Contract Buy-Back Program Functions and Invest Program Funds

The Buy-Back Program is governed by the Indian Land Consolidation Act (ILCA), and the ILCA does not allow tribes to contract program functions under the Indian Self-Determination and Education Assistance Act (ISDEAA). With the support of tribal organizations, Vice-Chairman Barrasso sought to amend the *Cobell* settlement in 2010 to authorize tribes to use contract and compacts under the ISDEAA to manage the Buy-Back Program. At that time, however, the Administration opposed any change to the settlement and specifically opposed allowing tribes to contract the program.

Equally important, for the ten year duration of the program, the \$1.9 billion appropriated for the Buy-Back Program will sit in a non-interest bearing account and gain no value over time. Had the ISDEAA changes been incorporated when Congress ratified the *Cobell* settlement, this would not be an issue because the ISDEAA allows funds for contracted or compacted programs to be transferred directly to tribes, at which point the tribes can invest the funds themselves. Every fiscal year that goes by without this money being invested represents money and opportunity lost.

Ideally, the Buy-Back Program would transfer the full amount of the Nation's purchase ceiling amount (approximately \$1.2 million) to the Nation and let us administer the program functions and invest the funds. If the Buy-Back Program followed this model for all tribes that have purchase ceiling allocations and wish to enter contracts and compacts with the department, the program would know much earlier those tribes that have higher rates of offer acceptance and those where acceptance rates are low. This would allow for a more equitable and efficient reallocation process—i.e., directing the Buy-Back Program funds where the funds are most likely to be spent.

Legislation has been introduced in both the House (H.R. 5020) and the Senate (S. 2387) that addresses tribal contracting of the Buy-Back Program under the ISDEAA and investment of Buy-Back funds. There are key differences in these bills and the Nation urges this Committee to work with the House Subcommittee on Indian and Alaska Native Affairs to find the fastest way to ensure these changes are enacted into law.

### 3. Deploy Additional Resources to Engage with Those Tribes that are not on the Top 40 List

The Nation understands the Buy-Back Program's desire to initially work with those tribes with the largest purchase ceiling allocations. Other tribes that are not in the top 40, however, certainly have the managerial capacity to begin making offers to landowners immediately or with little administrative preparation. At the end of the Buy-Back Program's effective life, success will be measured by the total number of fractionated interests purchased and the total amount of acreage re-consolidated in tribal ownership.

In interactions with the Buy-Back Program, the Nation has struggled to get answers to questions as the program staff's time seemed focused on the largest tribes. The Nation recommends that the program make additional resources available to work with those tribes, like the Nation, that are not on the top 40 list.

### Forward-Looking Trust Reform

The Nation is a strong proponent of tribes having direct control over their resources and minimizing federal bureaucracy in tribal decisionmaking, especially on matters relating to the Nation's trust lands.

For example, the Nation is one of a small number of tribes nationwide and the first in our region that have contracted the BIA's Land Title Records Office (LTRO) under the ISDEAA. Contracting the LTRO function has allowed the Nation to access the TAAMS system and generate title status reports without having to rely on the BIA's Regional Office. Performing the LTRO function also allows the Nation to approve leases, permits, and process land acquisitions more quickly than relying on the BIA.

Assuming these functions, in tandem with the Nation's planned assumption of surface leasing authority under the recently-enacted HEARTH Act, will facilitate and expedite land-related approvals formerly performed by the Federal Government. The Nation has also submitted tribal leasing regulations to implement the HEARTH Act to the BIA but, ironically, the 120 day window for the BIA to act on the regula-

tions has passed, and the Nation has yet to hear any response from that agency. Nonetheless, the Nation is hopeful that its tribal regulations will be approved soon so that it can further expedite leases of its tribal lands. Reducing the federal bureaucracy in these areas will allow the Nation to move more quickly on economic development opportunities that will, in turn, enhance the quality of life for the Nation's members.

As the Committee continues its oversight of the Buy-Back Program and considers reforms to federal trust functions, we encourage the Committee to pursue proposals that have practical, tangible impacts on tribal communities and that will reduce federal bureaucracy. One such proposal is S.165, the Indian Trust Asset Reform Act, which would give tribes a direct role in the management of their trust resources and transition Office of the Special Trustee functions under a single administrative umbrella. The Nation strongly supports this bill and urges the Committee to expedite its consideration of the bill in the remaining months of the 113th Congress.

This concludes my testimony. At this time, I would be happy to answer any questions.

The CHAIRMAN. Thank you, Susan. There will be questions when we get all done.

Mr. Helo Hancock, from our friends to the west in Coeur d'Alene country. You are up.

**STATEMENT OF HELO HANCOCK, LEGISLATIVE DIRECTOR,  
COEUR D'ALENE TRIBE**

Mr. HANCOCK. Thank you, Chairman Tester and Vice Chairman Barrasso and Senator Heitkamp. I appreciate the opportunity to be before you today.

My name is Helo Hancock. I am the Legislative Director for the Coeur d'Alene Tribe in beautiful northern Idaho. I know the chairman is familiar with the area.

The Coeur d'Alene Tribe is not on the list of 40 of the highly most fractionated tribes. We were one of the few tribes, one of the first tribes to enter into a cooperative agreement with the Bureau in the Buy-Back program. The tribe has a fairly robust information data base of landowners on the reservation, along with a very detailed plan. We are carrying out our outreach efforts now. We are waiting for the appraisals to come back, hopefully later this month and shortly thereafter the offers will go out.

Right now all signs point to a fairly quick exhaustion of our allocation. One of the things we wanted to ask the Committee today was to investigate further some of the proposals that were mentioned in earlier testimony about investing the funds that are sitting there right now not earning any interest that could be used to purchase more fractionated interests. And also to consider what a reallocation would look like, because there are certainly, as raised by Senator Heitkamp, some tribes may not be interested in selling. And it would be a travesty for that money to disappear and not be used.

The second thing I would like to talk to the Committee today about is S. 165, which is the Indian Trust Asset Reform Act that was introduced in this Committee by Senator Crapo in the 112th and also the 113th. S. 165 is a cost-savings bill that would increase efficiency and allow tribes to manage their own trust assets. The bill largely originated in the 109th Congress, was co-sponsored by then-Chairman McCain and Vice Chairman Dorgan. It was S. 1439. Two of the substantive provisions in this bill are taken basically directly from that bill.

The bill does two major things. First and foremost, it creates a demonstration project that would allow tribes to put together a trust asset management plan that would be uniquely curtailed or tailored to their interests, to the goals of each reservation and the assets they manage on their reservation.

A good example would be, for example, in our neck of the woods, timber. Currently tribes are required to use the BIA management plan for when to harvest timber and where to harvest and how to harvest, how often. A plan could easily be tailored to the unique concerns of a reservation that may want to designate some areas as a tribal wilderness area, or not harvest, because of the markets or not harvest as much for certain reasons. This would give tribes the flexibility to manage those types of assets. What a better way to encourage self-determination than to allow tribes to manage their own affairs.

The second thing this bill does, as previously mentioned, would sunset OST, the Office of Special Trustee, which was created in 1994 as a temporary agency to address some of the issue with *Cobell*. And the agency has grown exponentially since then. We are not here to say that everything OST does is bad or should be eliminated because it is not. There are certain functions that should be carried on and could easily be transferred back into BIA and remain. The bill provides for that. It is laid out in Title 3 of the bill.

We talk about some of the duplicative functions that happen within BIA and OST and a great example would be the appraisals. Indian tribes can't do their own appraisals in many cases, so they request them from BIA. Well, BIA can't do the appraisal, they have to request it from OST. And when we don't hear back, we contact one of them, they will blame it on the other. You can sort of see the dog chasing the tail.

This would also provide for some cost-savings and contemplates the Intertribal Interior Budget Council on where to recommend those cost savings go as those functions are transferred back within one single line of authority. That bill was developed in Indian Country largely by Committee staff that traveled the Country to get input from tribal leaders. It was developed, as I said, in Indian Country by tribal leaders. We would ask this Committee to look closely at moving that forward.

I will stand for any questions.

[The prepared statement of Mr. Stensgar follows:]

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

Good afternoon Chairman Tester, Ranking Member Barrasso, and members of the Committee. My name is Ernest Stensgar and I am testifying today in my capacity as Vice-Chairman of the Coeur d'Alene Tribe ("Tribe") and also on behalf of the Affiliated Tribes of Northwest Indians ("ATNI") as Chair of ATNI's Trust Reform Committee. I am pleased to provide an update of the Coeur d'Alene Tribe's implementation of the Land Buy Back Program ("Program") as well as my Tribe's and ATNI's view on trust reform—in particular, our strong support for S. 165, the Indian Trust Asset Reform Act.

#### **Coeur d'Alene Tribe's Implementation of the Land Buy Back Program**

The Department of the Interior awarded the Coeur d'Alene Tribe a Cooperative Agreement to complete certain tasks related to the Buy-Back Program on April 30, 2014. Under those terms, the Tribe agreed to conduct outreach for the Program on behalf for the Program since the parties agreed that the Tribe was best positioned

to communicate with trust landowners about the benefits of the Program. The Tribe and the Program also agreed that we needed to have the flexibility to tailor our outreach efforts to the unique characteristics of the landowners on our reservation.

Coeur d'Alene Tribal staff designed its outreach plan to build upon existing communication with the large group of landowners who receive annual crop income and who frequently contact the Tribe's Land Services Program for information. As a result, the Tribe has reliable contact information for the vast majority of landowners, as well as a long list of willing sellers. The Tribe's goal from outreach efforts is to locate landowners, confirm contact information, communicate Buy-Back Program information and goals, and determine which landowners wish to sell their land interests.

Landowner response to the initial outreach effort has been very positive and early indications point to rapid exhaustion of the initial purchase ceiling allocation of \$4.1 million. To date, the Tribe has hosted four landowner information meetings on-reservation, appeared at two off-reservation events, sent mailings to every landowner, posted advertisements in Tribal and local newspapers and fielded over a hundred personal inquiries as a result of initial outreach efforts. The Department has indicated that appraisals will be completed by the end of July, at which time the Tribe will amplify efforts to communicate with landowners and determine which landowners truly wish to sell their interests with a known value in hand.

The Coeur d'Alene Tribe has consistently emphasized the importance of eliminating fractionation and increasing Tribal ownership interests on the Coeur d'Alene Reservation. Most of the fractionated parcels that the Tribe is targeting produce income under crop-share leases, which are a particular kind of agriculture lease where the beneficial owners have the ability to maximize their income by selling crops when the price is highest. Crop share revenue represents the largest source of natural resource income for the Tribe. These leases are also difficult to administer, so in addition to increasing income for the Tribe, the Department will also be relieved of additional administrative burdens.

The Tribe applauds the efforts of the Department in selecting the Coeur d'Alene Tribe as one of the first Tribes to participate in the Buy-Back Program. As the Committee continues to monitor the Buy-Back program, the Tribe recommends that the Committee work to ensure that Indian tribes have the ability to invest the Program funds allocated to them to maximize the number of fractionated interests that can be purchased. The Tribe has provided testimony on this issue to the House and Senate Appropriations Committees. We also request that the Program provide opportunities for tribes to apply for any unused Program funds.

#### **Forward Looking Trust Reform: ATNI and Its History on Trust Reform Issues and S. 165**

As the Committee is aware, when the *Cobell* settlement was unveiled in late 2009, then-Secretary Ken Salazar issued a Secretarial Order creating the Secretarial Commission on Indian Trust Administration and Reform (CITAR). Last December, the CITAR finished its work and made a number of findings and recommendations—some of which are, in the CITAR's own characterization, "sweeping" and would require congressional action. For example, the CITAR's central recommendation is to remove Indian trust related decisions and authority from the Assistant Secretary—Indian Affairs (and other agencies), and turn those over to a newly created, multi-member commission situated within the Department whose members would be subject to Senate confirmation.

Other, more modest CITAR recommendations could be implemented immediately, such as having the Department utilize existing administrative authorities to allow tribes to waive appraisals and valuations. At its June 2014 mid-year conference, the National Congress of American Indians enacted Resolution #ANC-14-051, which noted that the CITAR recommendations require "further study, review and discussion within Indian Country."

Prior to the CITAR issuing its report, ATNI, through its Trust Reform Committee, developed S. 165, the Indian Trust Asset Reform Act, which is pending before this Committee. S. 165 addresses two concepts that were developed by Indian country and have enjoyed widespread support in subsequent years: giving tribes more direct control over their trust assets and transitioning the Office of the Special Trustee (OST) to a new Under Secretary for Indian Affairs.

Compared to some of the CITAR recommendations, S. 165 is a modest proposal that is intended to provide tribal governments with new asset management authority and relief from bureaucratic inefficiency. ATNI not only intended for S. 165 to provide practical, on-the-ground change, but also to be legislation that could be enacted into law in the current political climate.

For more than a decade, ATNI and its member tribes in the Pacific Northwest have been active proponents of forward-looking trust reform. Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California and Montana. 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 the tribes. It is also based on our recognition that in nearly every instance, Indian tribes have demonstrated that they are in a better position to manage their affairs than the Federal Government.

Most of the text of S. 165 originated from S. 1439 and its House companion bill, H.R. 4322, which were introduced in the 109th Congress. Those bills were introduced and co-sponsored by the respective committee chairmen and ranking members of the House Natural Resources Committee and the Senate Committee on Indian Affairs. Then-Chairman John McCain and Vice-Chairman Byron Dorgan sponsored the legislation in the Senate. Following introduction, staff from the committees of jurisdiction in both chambers travelled across the United States to consult with Indian country on the legislation. The committees then generated a revised version of S. 1439 to reflect Indian country's input. ATNI testified in favor of the bill at a joint hearing of the House Natural Resources Committee and the Senate Committee on Indian Affairs on March 1, 2006. Although S. 1439 was not enacted, ATNI continued to promote the bill and its concepts in subsequent years.

The announcement of the *Cobell* settlement in late 2009 consumed much of the attention and energy in Indian country on forward-looking trust reform. Once Congress ratified the *Cobell* settlement in 2010, however, ATNI's Trust Reform Committee refocused its efforts to advance the concepts in S. 1439.

Using the committees' revised draft of S. 1439 as a template, 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: title III, the Indian Trust Asset Demonstration Project, and title V, Restructuring the OST.

Passage of the *Cobell* settlement and other considerations preempted the need for the other titles of S. 1439. For example, title II of S. 1439 would have created a commission to make recommendations on Indian trust policies and regulations. The CITAR was charged with a similar, if not broader, mission. To include yet another commission in the bill seemed duplicative in light of the CITAR, especially since Indian country has long known the challenges to reforming the trust system and sought practical, on-the-ground solutions.

As introduced, S. 165 represents the culmination of these efforts. Several individuals and tribal leaders who participated in developing S. 165 had previous careers working for the BIA and OST and were able to provide practical input to guide our efforts. ATNI is extraordinarily proud of S. 165 and is grateful for the Committee holding today's hearing.

#### **Overview of S. 165**

The substantive provisions of S. 165 are in titles II and III, which are discussed below:

##### *Indian Trust Asset Demonstration Project*

Title II would establish a demonstration project to authorize Indian tribes, on a voluntary basis, to direct the management of their non-monetary trust resources through negotiated agreements with the Secretary. To participate, tribes would submit to the Secretary of the Interior ("Secretary") a proposed Indian trust asset management plan that must describe, among other criteria, the trust assets that will 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.

In addition to other enumerated criteria, the Secretary may not approve a proposed plan unless it is consistent with federal law applicable to the management of the trust assets. After an Indian tribe submits a proposed plan, the Secretary must approve or disapprove it within 120 days.

Unlike existing 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 areas not be harvested at all to en-

courage tourism or promote certain wildlife habitat. Currently, the BIA is the final decision-maker on these issues. If enacted into law, tribes for the first time would have the flexibility to dictate these management standards under this demonstration project authority.

As the example above illustrates, this demonstration project authority would open new doors for Indian tribes to generate on-reservation economic development using their existing resources, whether those resources are timber, agriculture, or even traditional energy.

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 yet represent a fraction of the actual need, this demonstration project is a practical tool that tribes will utilize immediately.

#### *Restructuring of the Office of the Special Trustee*

Congress created OST in 1994 as part of the American Indian Trust Fund Management Reform Act. That Act provided that OST would be a temporary entity to oversee certain financial reforms of Indian trust funds at the Department of the Interior (DOI). 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. That position has been vacant since 2009.

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.

OST completed implementing the major reforms it was charged with implementing years ago. Since it was established, OST's role has expanded significantly to include activities far beyond managing Indian trust funds and implementing financial reforms.

For example, in 2002 OST assumed responsibility for appraising Indian trust land and trust property, even though this function has nothing to do with 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 knows from its focus 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.

Title III of S. 165 would provide for the transition of OST functions to a new Under Secretary for Indian Affairs. Section 303 would establish the position of Under Secretary for Indian Affairs (“Under Secretary”), which will report directly to the Secretary. The Under Secretary would oversee the administrative transition of necessary OST functions and activities, while eliminating those that are duplicative of existing BIA and DOI programs. Section 305 provides an effective date for the termination of OST and authorizes the Under Secretary to administratively reorganize, discontinue, and appoint officers and employees to carry out transferred OST functions.

Indian country has long complained that the monolithic growth of OST's footprint and budget has siphoned funding from other BIA programs. In FY 2006, OST's budget was \$222.7 million—more than double what it had been four years earlier. While OST's budget has decreased in recent years following the *Cobell* settlement, no other BIA program saw this type of funding increase.

In fact, during those years funding for most BIA activities was either flat or saw reductions. The BIA continues to be woefully underfunded and understaffed. Law enforcement is a good example. On many reservations, one or two officers are re-



responsible for policing large geographic areas because funding has not been available to fill vacant officer positions. Even the infusion of two or three additional officers on these reservations would make a huge impact to public safety. Conversely, OST now has 638 full time equivalent employees according to its FY 2015 budget justifications.

To address this inequity, Section 306 directs the Under Secretary to initiate procedures to identify resulting cost savings from those OST programs and activities that are duplicative or no longer needed as a result of the transfer. This cost savings information would be provided to the Secretary and to joint Tribal/Interior Budget Council (TIBC). The TIBC is the advisory committee comprised of tribal representatives from across Indian country and federal officials that collaborates on DOI budget issues. The tribal TIBC representatives would then provide their own recommendations on how any cost savings should be reallocated.

OST performs certain functions related to its original mission that benefit Indian country. These include its toll-free call center, which allows Indian beneficiaries to receive information about their trust funds. These also include the reforms and accounting systems that OST instituted as result of the *Cobell* litigation to reconcile, track and invest Indian trust funds. S. 165 contemplates that these and other necessary functions would continue undisturbed. They would simply be administratively transferred and report to the Under Secretary.

In addition to transitioning OST functions, the Under Secretary would also assist in coordinating BIA policies with the policies of other bureaus and offices within DOI. For decades, this lack of coordination has negatively impacted Indian country as other entities within DOI have made decisions or undertaken initiatives without considering the impacts on Indians and tribes.

Because the Under Secretary would be charged with improving efficiency and coordinating with the Assistant Secretary-Indian Affairs and other DOI agencies, there would no longer be institutional competition between OST and BIA after the OST functions transfer. All of this would provide an immediate, practical benefit to Indian country.

ATNI and the Coeur d'Alene Tribe are grateful for the Committee holding today's hearing. With the legislative calendar quickly slipping away, we look forward to working with the Committee to advance S. 165 as quickly as possible.

The CHAIRMAN. Thank you for your testimony. I appreciate it. There will be questions.

Next we have Jennifer Keough, from the Garden City Group, who is responsible for getting the checks out at the appropriate time. So you are on, the floor is yours, Jennifer.

**STATEMENT OF JENNIFER KEOUGH, EXECUTIVE VICE  
PRESIDENT/CEO, THE GARDEN CITY GROUP, INC.**

Ms. KEOUGH. Chairman Tester, Vice Chairman Barrasso, and distinguished members of the Committee, my name is Jennifer Keough. I am the Chief Operating Officer of the Garden City Group, and I am pleased to be here today.

Garden City is honored to serve as the court-appointed claims administrator in this important *Cobell* settlement. We fully understand what is at stake in this important case for the hundreds of thousands of class members who have waited decades to resolve claims over Indian trust accounts, even before the settlement was approved by Congress.

Garden City has devoted more than 730,000 hours to fulfilling our assigned duties under the settlement. At every step, we have dedicated the resources to complete our tasks within our authority as quickly and efficiently as possible. We have met every deadline set by the court.

We stand ready to issue all remaining payments owed to class members as soon as the payment amounts are resolved and the parties approved and the court approves the final payments.

In performing the functions as the claims administrator, Garden City operates at the direction of the parties and subject to the approval of the court. Garden City is authorized to act only and when specified in the settlement agreement. We are not allowed to make any payment to class members until the amount of the final payment is authorized and approved by the court.

The *Cobell* litigation involves many trust account records that were missing, incomplete or simply inaccurate. A big part of Garden City's role has been to assist the parties in identifying and locating potential class members, including through an ambitious program of outreach to Indian communities across the Country. We have met with thousands of Indian beneficiaries to help reconstruct individual records and have conducted a massive notification drive.

We also operate a website and a call center. Our call center has received over 2.8 million calls, over 15,000 per week. Our website receives over 4,000 visits per week. As a result, we have been able to locate over 178,000 class members for whom there was insufficient contact information in the original data provided to GCG.

Of the nearly 67,000 people officially identified by the government as whereabouts unknown, we have located 80 percent. Thousands and thousands of additional individuals will receive payments because of these efforts.

As the Committee knows, there are two distinct settlement classes here. There is the trust administration class and the historical accounting class. Shortly after the settlement was approved in December 2012, the court authorized the commencement of payments to the historical accounting class. Garden City began mailing those payments within three days of receipt of the court order. And we completed that process well within the deadline set by the court.

Since that time, we have continued to distribute these payments as we have located correct contact information, resolved liens, and identified proper beneficiaries for the deceased class members. I am pleased to report that more than 90 percent of the over 340,000 members of the historical accounting class have received their payments.

The payments to the trust administration class are in a different and more complex lot. The amounts to be paid have not yet been finally calculated as required by the settlement agreement and authorized by the court. Garden City therefore has no current ability to distribute any payments to the trust administration class.

Garden City was tasked with making the initial determinations for the class, and we put in enormous efforts to complete that work within the time frame set by the court. We reviewed more than 480,000 claim forms. We conducted over 86,000 reconsideration reviews and we identified over 240,000 eligible class members. Fewer than 2,500 of our claim determinations, or less than one half of 1 percent, were appealed to the special master.

We know the Committee has questions about the timing of payments to the trust administration class. There are two primary reasons why these payments have not yet been issued. The first is that the original settlement agreement contemplated that payments to the trust administration class would only occur when all appeals of eligibility were resolved. That issue is now addressed by

a recent court order permitting a phase distribution during the pendency of the appeals.

The second reason is that under the settlement, no payments may be authorized for any eligible trust administration class member until the Department of Interior has calculated the amount owed under a specified formula. Based on a status report filed with the court two days ago, and the testimony that we heard here today, our understanding is that DOI is working on those calculations and currently expects to complete this work in early fall.

DOI's calculations depend on information only available to DOI, and Garden City is not involved in performing those calculations. Once those final numbers are provided to us and approved by the court, Garden City stands ready to begin the process of issuing payments to the trust administration class.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Keough follows:]

PREPARED STATEMENT OF JENNIFER KEOUGH, EXECUTIVE VICE PRESIDENT/CEO, THE GARDEN CITY GROUP, INC.

Chairman Tester, Vice Chairman Barrasso, and distinguished Members of the Committee, my name is Jennifer Keough and I am pleased to appear today representing The Garden City Group, Inc. ("Garden City"), the Court-approved Claims Administrator for the historic settlement authorized by Congress in *Elouise Pepion Cobell, et al. v. Jewell* (the *Cobell* Settlement). Garden City welcomes the opportunity to assist this Committee in its oversight of the implementation of the Cobell Settlement.

Garden City is one of the nation's leading class action settlement administration firms. We employ more than 1,000 people in ten offices throughout the United States, including our Corporate Headquarters in Lake Success, New York, and our 50,000- square-foot West Coast Headquarters in Seattle, Washington, where much of our work on the *Cobell* Settlement is performed. Over the past three decades, Garden City has repeatedly served as court-approved administrator in class actions throughout the country. In more than 2,500 matters, we have distributed more than \$30 billion in settlement funds. We are regularly retained by defense counsel as well as plaintiffs' counsel and have managed more billion-dollar-plus settlements than any other firm in our industry. Garden City has been ranked the number one or number two claims administrator by *The New York Law Journal* four years in a row.

I am Executive Vice President and Chief Operating Officer of Garden City and am proud to manage our important work on the Cobell Settlement. While we bring the same commitment and diligence to all of our jobs, Garden City is particularly honored to have been selected to serve as Claims Administrator for this enormously consequential project.

We understand and appreciate what is at stake in this case for the hundreds of thousands of Class Members who have waited decades for the resolution of claims concerning Individual Indian Money (IIM) trust accounts and other trust assets. To assist in the implementation of the *Cobell* Settlement, Garden City has devoted more than 730,000 hours thus far to fulfilling our assigned duties under the Settlement. At every step along the way, we have dedicated the attention and resources needed to complete all the tasks within our authority as quickly and efficiently as possible, and we expect to be ready to issue all remaining payments owed to the Class Members expeditiously once the payment amounts are finally resolved by the Parties and approved by Judge Hogan, as required by the terms of the Settlement.

**The *Cobell* Settlement and Garden City's Role as Claims Administrator**

Thirteen years after *Elouise Cobell* and her fellow plaintiffs brought suit against officials of the Department of the Interior (DOI) and the Secretary of the Treasury seeking to correct deficiencies in the management of IIM trust accounts and related assets, the Parties finalized their landmark Settlement Agreement on December 7, 2009.

The Settlement Agreement was contingent on final court approval following the resolution of any appeals and on the enactment of legislation by Congress ratifying the Settlement and authorizing the necessary funding. Congress authorized the Set-

tlement with the passage of the Claims Resolution Act on December 8, 2010. Thereafter, the District Court gave preliminary approval to the Settlement on December 21, 2010, and issued its final Order of approval on July 27, 2011. Four Class Members appealed the final judgment approving the Settlement, and those appeals were not resolved until November 24, 2012. Accordingly, the *Cobell* Settlement did not receive final approval until that date.

The Settlement Agreement established two distinct and partially overlapping settlement classes, the Historical Accounting Class and the Trust Administration Class, whose members were to receive payouts under the Settlement in two stages. At Stage 1, each identified member of the Historical Accounting Class was to receive a per capita payment of \$1,000. At Stage 2, each identified and eligible member of the Trust Administration Class was to be paid a baseline payment of \$500 plus a pro-rata amount based on an "Assigned Value" calculated in accordance with a formula set out in the Settlement Agreement. The Settlement Agreement states that "No Stage 2 payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated."

As Claims Administrator for the Cobell Settlement, Garden City's role is to provide administrative services to the Parties to facilitate the distribution of settlement funds to the Class Members in accordance with the requirements and conditions of the Settlement. These services include assisting Class Counsel in administering and distributing the settlement funds with the approval of the Court and in reliance on information provided by DOI. They also include locating members of the Historical Accounting Class, starting from contact information provided by DOI. With respect to the Stage 2 payments to the Trust Administration Class, Garden City was tasked, subject to approval of the Court, with establishing standards and procedures to permit potential members of the Class to submit documentation supporting their claim of eligibility to receive a Stage 2 payment, and Garden City was given the job of making the initial determinations of eligibility, subject to a right of appeal to the Special Master and final resolution by the Court. Garden City has no role in administering the Land Buy-Back Program or the Trust Land Consolidation Fund established by Congress.

In performing all of its functions, Garden City operates at the direction of the Parties and subject to the supervision of the Court. Garden City is authorized to act only when and as specified under the terms of the Settlement. In particular, Garden City is prohibited from making any payment under the Settlement unless and until the amount of the payment is finally resolved pursuant to the requirements of the Settlement and is specifically approved by the Court.

#### **Garden City's Work Identifying and Locating Class Members**

Because many of DOI's records relating to IIM trust accounts and individual Indian beneficiaries were missing, incomplete, or inaccurate, Garden City was required to undertake very extensive efforts to assist the Parties in identifying and locating potential Class Members. Some of the issues we faced when we first received data from DOI in 2010 included the following:

- There was insufficient contact information for 315,349 Class Members and no address at all for 174,909 names in this population.
- We received incorrect address information for 73,594 Class Members.
- 66,846 Class Members were officially classified as "Whereabouts Unknown" by DOI.
- 21,974 individuals listed as alive were actually deceased, and 1,313 individuals listed as deceased were actually alive.
- In 14,649 cases, there were multiple different records for the same individual.
- Some individual Indians were incorrectly identified as non-Indian.
- Records were missing for thousands of Class Members in Oklahoma and Alaska.

To address these data issues and assist Class Counsel in facilitating distribution of payments in accordance with the Settlement, Garden City has participated in an ambitious program of outreach to Indian communities. These outreach efforts have included:

- Sending out more than 375,000 notices and claim forms and more than 245,000 additional outreach mailings;
- Maintaining a call center that receives an average of 15,000 calls per week and has handled over 2,800,000 total calls;
- Scanning and reviewing 3,219,477 pages of documentation relating to potential Class Members;

- Holding dozens of meetings in Indian communities to identify potential Class Members;
- Working with various Indian Tribes, Alaska Native Corporations, and other Native American community organizations to identify potential Class Members;
- Publishing announcements in dozens of newspapers and tribal publications listing Class Members for whom we have insufficient or incorrect information; and
- Maintaining and updating the *Cobell* Settlement website, [www.indiantrust.com](http://www.indiantrust.com), which receives an average of 5,000 visits per day.

Specifically, over the last year, Garden City and Class Counsel have conducted town hall meetings in 14 different cities, and Garden City met individually with thousands of Indian beneficiaries at these meetings to go over their record information. Below is a list of cities where the meetings have been held over the last twelve months or are scheduled to occur in the immediate future.

*Summer and Fall 2013*

- Farmington, NM
- Gallup, NM
- Crown Point, NM
- Houck, AZ
- Oklahoma City, OK

*Spring and Summer 2014*

- Anadarko, OK
- Durant, OK
- Red Rock, OK
- Anchorage, AK
- Belcourt, ND
- New Town, ND
- Eagle Butte, SD
- Pine Ridge, SD
- Red Rock, OK
- Kamilche, WA

These locations were chosen because they are in areas of the country with higher numbers of “Whereabouts Unknown” Class Members, Class Members or beneficiaries lacking sufficient deliverable mailing address information, and estates of deceased Class Members lacking probate or other distribution documentation. The town hall meetings were set up to discuss the process and timeline for the Trust Administration Class distribution, assist Class Members with documentation, and reach out to Class Members needing updated contact information. To that end, Garden City has brought the contact data provided by DOI to each meeting on a secure database system created for the Settlement so that Class Members can validate and update their records onsite and provide documentation directly to Garden City to facilitate payment distribution. Typically, we have arranged to have a team of 5 to 10 people with computer terminals at each meeting to assist individuals with inputting and correcting data.

I have personally attended many of these meetings and will be at a meeting in Washington State this coming weekend. We are currently working with Class Counsel to schedule additional town hall meetings in Idaho, Montana, Washington, Wyoming, and potentially other States.

In addition, Garden City has contacted more than 300 Tribes and is working with approximately 200 tribal organizations to obtain current addresses and updated contact information so that awards can be distributed without delay once approved by the Court.

As a result of these efforts to date, we have thus far been able to locate approximately 178,000 Class Members for whom there was insufficient contact information, or 56 percent of the affected individuals. In addition, of the 66,846 individuals officially identified as Whereabouts Unknown, we have located approximately 80 percent, or all but 13,890. We were also able to assist DOI in identifying an additional 12,306 individuals who should have been accounted for as members of the Historical Accounting Class but were not identified in the records provided to us, and our identification of these 12,000-plus individuals allowed them to receive payment under the Settlement.

Furthermore, Garden City has undertaken efforts to identify the heirs of the 61,588 Class Members we determined were deceased. We assisted with 620,000 mailings and dozens of meetings and publications designed to find the heirs of these Class Members so that we can distribute payments to their estates. In fact, it was Garden City’s review of claimant documentation plus our outreach to Class Mem-

bers that enabled us to identify categories of documents that claimants could rely on to resolve estate issues more easily than had been the case early in the Settlement administration. Class Counsel petitioned the Court to allow the use of this additional documentation, to the benefit of a great many Class Members.

#### **Garden City's Distribution of Historical Accounting Class Payments**

Shortly after final approval of the Cobell Settlement, on December 11, 2012, the District Court issued an Order directing "commencement of payment [for the Historical Accounting Class] no later than December 24, 2012." Three days after the Court's Order, on December 14, 2012, Garden City commenced the mailing of Stage 1 payment checks to the Historical Accounting Class. We completed these Stage 1 mailings well within the deadline set by the Court.

DOI subsequently identified more than 12,000 additional members of the Historical Accounting Class who were not encompassed in the Court's December 11, 2012 Order. On January 23, 2014, the Court authorized the distribution of Stage 1 payments to these additional Class Members, and, once again, Garden City promptly completed this subsequent distribution.

I am pleased to report that to date, more than 90 percent of the 339,206 individuals identified as members of the Historical Accounting Class have received the Stage 1 payments to which they are entitled. The remaining identified Class Members include estates pending in probate, Class Members whose checks were mailed but returned as undeliverable, Class Members with missing addresses, and Class Members whose checks had to be withheld due to liens. We will continue to process as quickly as possible all remaining Stage 1 payments, when and as additional required information is identified and the payments are permitted by law and approved by the Court.

#### **The Processing and Status of Trust Administration Class Claims**

Unlike the payments to the Historical Accounting Class, the Stage 2 payments to the Trust Administration Class have not yet been calculated by DOI as required by the Settlement, nor have they been authorized by the Court. Therefore, Garden City has no current authority to distribute any payments to the Trust Administration Class.

In its December 11, 2012 Order, the Court directed that notice be provided to potential members of the Trust Administration Class, and the Court initially set a deadline of March 1, 2013 for claimants to mail their claim forms to Garden City. The Order also set a schedule for Garden City's initial determinations of class eligibility, for the submission of additional information by claimants initially determined by Garden City to be ineligible, and for the appeal of eligibility determinations to the Special Master. On April 10, 2013, the Court modified the schedule to give claimants additional time to obtain documentation to support their claims, and under the modified schedule, the deadline for appeals of Garden City's eligibility determinations to the Special Master was extended to September 4, 2013.

Garden City completed all of the required eligibility determinations for the Trust Administration Class within the deadlines set by the Court. Meeting these deadlines required enormous administrative efforts. We received more than 480,000 claim forms in this process and reviewed every submission to determine eligibility. As a result of this process, we initially determined that 186,679 claimants were eligible to receive Stage 2 distributions. Of those initially determined to be ineligible, 85,979 requested reconsideration, and with the additional information submitted by these claimants, Garden City was able to determine that 53,169 of those requesting reconsideration were eligible Class Members. I am pleased to report that only 2,451—or less than one half of one percent—of our claim determinations were appealed to the Special Master.

I know this Committee has questions about the timing of payments to the Trust Administration Class and is keenly interested in the reasons why these payments have not been authorized by the Court and distributed. There are two primary reasons why these payments have not yet been authorized.

First, the original terms of the Settlement contemplated that the distribution of any payments to the Trust Administration Class would occur after all appeals of eligibility determinations had been finally resolved by the Special Master and the Court. The reason was that the pro-rata amount owed to any one member of the Class depends upon the total number of eligible Class Members and the calculation of the final payment amount determined to be owed to each individual claimant. Because more than 2,000 eligibility determinations were appealed to the Special Master and because there is no deadline for the final resolution of eligibility appeals, Stage 2 payments were not authorized while appeals remained pending. Therefore,

Garden City had (and still has) no authority to mail any checks to the eligible members of the Trust Administration Class.

Fortunately, the issue created by the appeal process has now been addressed by the Parties and the Court. Class Counsel recently moved the Court for an order permitting the phased distribution of Trust Administration Class payments prior to the final expiration of all the appeals, and on May 28, 2014, the Court approved this request.

The Court's May 28 Order, however, does not address the second issue that currently prevents Garden City from sending out any Stage 2 payment checks. Under the Settlement, Garden City may not make any payment to an eligible member of the Trust Administration Class until DOI has first calculated the amount owed, as provided for in the Settlement, and the Court has specifically approved the payment amount. Garden City has no access to the information necessary to make these calculations and is not involved in making the calculations required by the Settlement.

We have not yet received final award calculations from DOI, although we understand that DOI is continuing to work on finalizing those numbers. Once these amounts are determined, the payments must then be finally approved by the Court before Garden City is authorized to issue the payment checks.

Once the final numbers are provided to Garden City and approved by the Court, we stand ready to process and distribute payments to the Trust Administration Class as efficiently and quickly as possible. We are eager to complete the process.

Thank you, Mr. Chairman. That completes my testimony, and I would be happy to answer questions from the Committee.

The CHAIRMAN. Thank you for your testimony, Jennifer.

We will go to questions now. I am going to start with you, Carol. What concerns have you heard from your tribal members about the Land Buy-Back program?

Ms. LANKFORD. Just that they want this process expedited, that we have not made any purchases yet. They just want to see it start, the process start.

The CHAIRMAN. How about outreach from the Department of Interior regarding the Land Buy-Back program? Has there been adequate outreach for them?

Ms. LANKFORD. We have had a lot of conversations with them, but I don't know if we have had any progress with the conversation.

The CHAIRMAN. Has CSKT done anything as far as outreach goes?

Ms. LANKFORD. Can you repeat that question, please?

The CHAIRMAN. I was wondering if the tribe had done anything as far as outreach goes, to the members.

Ms. LANKFORD. Oh, yes, absolutely. We have already done the notification to the membership about the program. I think that is part of the problem, we have the information out there, but we haven't got started. So people keep asking, the membership keeps asking us, when are you going to start doing it, you have the information out there, you told us that we can sell our fractionated interest, but then nothing happens.

The CHAIRMAN. Susan Waukon, you stated in your written testimony that you are worried about the current acceptance rate of the buy-back offers, too low to ensure that all the money appropriated will be used. In fact, you said it in your verbal testimony, too, that all the money will be used consolidating the fractionated interests before the 10-year deadline is up. Has the Ho-Chunk legislature and tribal leaders been working with the owners of fractionated interests in order for the tribe to make sure that Ho-Chunk is above that 35 percent national average?

Ms. WAUKON. As being number 65 out of the 150 tribes on the Buy-Back program, we just recently started. We attended some of the prior discussions, the outreaches. We started working on cooperative agreements. That is what we are trying to do, is the outreach right now. We know there is a lot of interest in that consolidation. So yes.

The CHAIRMAN. Yes. The Department of Interior has been focused on the piecemeal execution of the Buy-Back program for good reason, working with a few tribes at a time. Your testimony indicates it is not even clear that the Ho-Chunk and perhaps other non-top 40 tribes, what the DOI plan is for you when the time comes. What sort of consulting or information sharing would be useful? What is being done at this point in time, if any? And what would be useful when it does happen?

Ms. WAUKON. Consulting with the BIA or just consulting—

The CHAIRMAN. Consulting with the Department or BIA.

Ms. WAUKON. I think the number one thing we have been running into is just, even though there is a template agreement, it is going to differ from tribe to tribe. So it would be nice to have more tribal to tribal templates to make them available. Some of the tribes that we have talked to that have some of the cooperative agreements, they kind of tell us of their horror stories, of the negotiation process and so forth. So to me it would be more of the tribal outreach, working tribal nation to nation, as we put it.

The CHAIRMAN. All right. Helo, your tribe recently entered into a cooperative agreement with the Department. Can you tell us how that agreement was negotiated?

Mr. HANCOCK. Yes. We met a few times with Mr. McClanahan and the folks from the Buy-Back program out in our neck of the woods. I think we met at a couple other locations. But all in all, it was a fairly involved process. The tribe worked pretty closely with them to get that negotiated. But we took on the outreach efforts, and as I mentioned earlier, we have a pretty substantial data base for existing landowners. So it was kind of a natural fit for us.

The CHAIRMAN. How long did it take to negotiate the agreement?

Mr. HANCOCK. I could be wrong here, but I think about six months.

The CHAIRMAN. Did it resolve all the outstanding issues? In other words, are there some unresolved issues?

Mr. HANCOCK. I don't know the answer to that off the top of my head, but I could definitely find out for you.

The CHAIRMAN. Then six months, were the things in the process you thought could be improved?

Mr. HANCOCK. I think so. I think tribes are fully accustomed to a pretty delayed response time on getting back on negotiating agreements with BIA and Interior. But in this case I think we had a fairly positive experience with the Buy-Back program.

The CHAIRMAN. Thank you. Vice Chairman Barrasso?

Senator BARRASSO. Thank you, Mr. Chair.

Just to follow up on one of the questions you had to Ms. Waukon, Secretary Connor, who was here earlier from the Department of Interior, in his written testimony he said they were pursuing some opportunities to include some of these less fractionated areas, such as your reservation and the Buy-Back program. In your written



testimony it says that your tribe has already done a lot of these things, like you have existing land title records program, which conducts functions very similar to those that are needed by the Buy-Back program. So it seems you are ready to go in terms of that aspect of it.

I am just curious how existing tribal systems, like what you have, how that could be incorporated better into the Buy-Back program to make it work better.

Ms. WAUKON. Well, that is kind of a lengthy response, but the short answer is that for us that have the experience, and we have been working steadily and doing more of the contracting ourselves and working with the Buy-Back program, I honestly think, just give us the money, let us do it.

Senator BARRASSO. Ms. Lankford, I see you shaking your head up and down, yes. Do you have anything you would like to add?

Ms. LANKFORD. Yes. In 1994, we got our title plat, and I tell you, we have been able to do a lot of things. The Bureau doesn't seem to be an obstacle to us, because we are able to do it all ourselves. There is an approval process, of course, but we are able to do it. So I think any tribe that has that kind of infrastructure will be able to get the Land Buy-Back program up and going and work through it.

Can I add one thing? The only obstacle I see in our process is the appraisal process. We have 13 appraisals done, well, we have a lot more than that out there, but that is done. But the Bureau requires approval on those appraisals, and we are the only ones that have this in our agreement. So it has put a roadblock in our way. Then they can't get to the appraisals to review them within five days. So then we have to start all over. It is just totally ridiculous to me that they would put that in our agreement and not put it in others. Why are we different?

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

The CHAIRMAN. Thank you. Senator Heitkamp?

Senator HEITKAMP. I want to follow up a little bit on the appraisal issue, because I think from what the Deputy Secretary said, it is appraisals that have been a challenge. We all know that it is difficult to do appraisals in rural communities, much less appraisals in your community. I want to just ask, Mr. Hancock, if you were going to improve the appraisal process today, what would you change in what the Department is doing?

Mr. HANCOCK. Thank you. I think the first thing would be to bring the appraisal process under one line of authority. Right now that is bifurcated.

Senator HEITKAMP. You mentioned that.

Mr. HANCOCK. That adds for administrative delays and red tape that we have been bogged down with. That is the first thing I would do is bring it under one line of authority.

Secondly, I think there are tribes that are capable of contracting for those services and doing the mass appraisals maybe much more efficiently than the Department could. Every tribe is different, there isn't a cookie cutter fit to it. So I think allowing that flexibility for each tribe to craft that appraisal scheme how they deem best would probably be the best approach.

Senator HEITKAMP. Did you consider that in negotiating your agreement?

Mr. HANCOCK. I know appraisals were a part of it, and I believe Interior, I think they are doing the appraisals.

Senator HEITKAMP. We hear testimony earlier from the Deputy Secretary that they are flexible on these agreements. If there were a structure that your tribe would be willing to kind of accommodate their concerns about appraisals but expedite this process, is that something you guys have talked about?

Mr. HANCOCK. I think we did discuss that process with them. I am not exactly sure how it was resolved or agreed upon.

Senator HEITKAMP. Carol, you expressed some frustration with the current agreement, the way it is written. Have you guys talked at all about an amended agreement, taking a look at other experiences, saying, I wish we had done it that way? And if you have, how has that request for modification been met?

Ms. LANKFORD. In my testimony, I said that we have contacted them and they don't respond back to us, even though it is a requirement that they get back to us. I believe that is where that is, is that they just don't get back to you. So then we have to continue to make the request.

Senator HEITKAMP. So you have requested modification, but there has been no response back.

Ms. LANKFORD. I can't say that in every instance, but I know it has happened numerous times.

Senator HEITKAMP. One last question about appraisals at Flathead. What do you see in terms of actual appraisal impediments to the Buy-Back program?

Ms. LANKFORD. I know we have every appraiser on the reservation working. I think there are four or five of them. We can get the appraisals done. What I did is used a wrong figure. We have 60 appraisals done and only 16 have been reviewed. So that makes us go back and start the process over. I don't think the problem is with the appraisals, actually getting the appraisals done.

Senator HEITKAMP. I am trying to understand why you only have five days and then you have to start the process back over again.

Mr. WATERS. I am George Waters. The tribe asked for a five-day turnaround period. It wasn't something that the BIA foisted on them. They wanted to try and come up with a system where the BIA would respond quickly. And the 60 instances in which they submitted appraisals where there was a required five-day turnaround, none of those time lines were met. They have to start over again.

Senator HEITKAMP. What do you mean by start over? You don't have to start the appraisal over again?

Mr. WATERS. The appraisal, that part of the appraisal system just wasn't accepted. So they do begin the process again, as I understand it. And another big problem is BLM mapping. BLM is not going to come onto a reservation and do this. If BLM's data is contrary to the TAAMS data, then BLM won't necessarily approve it. There is not enough flexibility, as I understand it from talking with the people running the program on the reservation in both the mapping and the appraisal process to sort of be realistic on day to day actions. Those are both big delays.

Senator HEITKAMP. So in light of those concerns, do you have concerns that you will basically see this program expedited and implemented within the 10-year period?

Mr. WATERS. Right now, they are a month into it and they haven't done a single one yet. And they have 11 months left.

Senator HEITKAMP. And you are just one reservation.

Mr. WATERS. The 12-month time frame is way too shot. Arguably the 10-year time frame is too short. Both bills in the House and Senate now would extend that, which I think would be a positive provision.

Senator HEITKAMP. Thank you, Mr. Chairman.

The CHAIRMAN. You can keep going if you like. You seem to be on a roll.

Senator HEITKAMP. No, it is always so frustrating to me, honestly, when you hear one side of the story, it is going well, we think we are on task, and then you all who have experience with this come to us and say, not really, we have concerns, we would like some modifications. I asked if there was flexibility or whether these templates were set in stone, because I know how that goes. Some lawyer in the government says, here is the absolute provisions and it is like it takes an act of God, never mind an act of Congress, to actually change that provision. Even though they say they are flexible, it just takes so long.

So what I am hoping that we are going to try and do is take a look at those shortcomings from the experience that you have had and begin to expedite this process in a way that appreciates the government to government relationships and nation to nation relationships that there ought to be. We have set a policy in this body and going forward of tribal self-determination. But every time we turn around and do a major program like this, it doesn't seem like we have a lot of tribal self-determination. Even though there are so many tribes that are ready to manage this and do this.

So I think given how difficult it is right now to get something changed in statute, we need to continue to push for accommodation in the implementation process that we have. Your testimony has been very valuable. I like this idea of consolidated appraisals maybe getting to some kind of structure or certification of an appraiser so that that process can work better. I like the idea of dealing and prioritizing tribal governments that have already done a great deal of title work where those issues are ready to go and the allocation can be expended without a whole lot of risk that you are providing a buy-back to someone or a payment to someone who doesn't technically own the land.

I know how passionately, from our tribal governments and obviously, I think every one of the tribes in North Dakota is in the top 40. Standing Rock is number 2. So they are passionate about getting this done. And that is the dream of this settlement. We need to make sure that this dream gets implemented. I share when, is the next opportunity to do this, it is going to be far away.

So I would ask, Mr. Chairman, that we continue to work with the Committee. Obviously we want to do the legislation but we want to continue to hear a unified story in terms of implementation and not, this is we think is happening and then have a group of people

who have been working so closely with this system come to us and say, well, not really. That has been problematic for us.

So this is a big part of what we hope to accomplish as a part of this settlement.

The CHAIRMAN. I think the key with all this is communication, and good communication up and down the line, and hopefully there will be conversations started simply from your line of questioning.

Senator HEITKAMP. Mr. Chairman, I also think it is not just communication, because these guys talk this issue to death, right? You have heard them say, we don't get any response, right? It is about listening. And actually, understanding that we are moving toward a tribal self-determination policy, and everything that is contrary to that ought to be examined in fine-toothed detail about why aren't we giving the tribes more self-determination, recognizing that the statute didn't do that. And I recognize that. But there are ways to accomplish self-determination beyond just a piece of legislation.

So I think it is critically important that we continue to put the pressure on DOI.

The CHAIRMAN. I agree.

Jennifer Keough, I have a few questions for you. Your testimony stated that the Garden City Group will be ready to distribute the final *Cobell* payments once those amounts are determined by the Department of Interior and those amounts are approved by the court. Once those amounts are approved by the court, how long will it take for the Garden City Group to send out those payments?

Ms. KEOUGH. Chairman Tester, as soon as we have court approval, we will be able to issue those payments within two to three weeks.

The CHAIRMAN. Oh, wow. Okay. And the Garden City Group has done a good job, as your testimony has indicated, 80 percent of the whereabouts of the unknown class members. You state that Garden City's review of claimant documentation and outreach efforts contributed to the increased resolution of estate matters of affected Indians. Could you go into a little bit more detail on this, like exactly what did you do and what more can be realistically done to find the rest of the whereabouts of the unknown individuals?

Ms. KEOUGH. Right now, Mr. Chairman, in the original data provided to us by the Department of Interior, there were 67,000 whereabouts unknown individuals. What we did in our work with class counsel and the Department of Interior, in addition to our call center, where we received lots of calls from people who self-identify and tell us, hey, we are not whereabouts unknown, this is where I am, this is where I am located, I am a trust administration class member, please issue my payment to me. We also have a website where we publish information that is approved by class counsel that helps people self-identify.

In addition, we have gone out to Indian communities, I myself this weekend are going to Washington State. We have been to Alaska, we have been to over 13 different Indian communities and we have done radio shows, I have done a radio show for Oklahoma. These are just some of the things that we are doing in order to encourage the whereabouts unknown individuals to self-identify.

Three weeks ago we were in Alaska and last week our call center received many, many calls from Alaska, helping us identify whereabouts unknown individuals.

The CHAIRMAN. In that vein, I think you said it, 15,000 calls a week?

Ms. KEOUGH. Fifteen thousand calls a week, over 2.8 million throughout the life of the case.

The CHAIRMAN. Regarding this settlement, the *Cobell* payment. What more can be done to get the information out? Let me give you an example. I just had the broadcasters in my office today as an association. Is there a potential for PSAs and could they be structured in such a way that they actually would do some good?

Ms. KEOUGH. I think so, Chairman. I think what we have done so far with going out to the Indian communities and being on radio shows and putting publication about the settlement in the paper has helped. But we can certainly talk to the parties about doing more.

The CHAIRMAN. That would be good.

In the past, at least to my understanding, Garden City Group has given individuals who call an estimate of what they might receive. This is based on a formula for the settlement, I am sure. We have recently heard concerns from individuals that that estimate may have gone down, in some instances, quite a bit. Can you describe how you provide estimates and what can be done about why a settlement payment would potentially go down?

Ms. KEOUGH. The original data provided to us from the Department of Interior contained an estimate, an estimate. When class members call the cost center, we provide them with that estimate. Since we receive new estimates from the Department of Interior, we provide them with the new estimates.

The CHAIRMAN. And those estimates might be lower?

Ms. KEOUGH. And those estimates might be lower.

The CHAIRMAN. Okay. I want to thank you, thank you for your testimony, thank all of you for your testimony and making the trek out here. I want to say that the Committee will continue to work with the Department of Interior, the Garden City Group and with individual tribes to make sure that settlement payments are made as quickly as possible. We will continue to monitor the Buy-Back program to ensure it can be successful and accomplish the goals at as many reservations as possible, with as much land as possible.

So the hearing record will remain open for another two weeks for any stakeholders wishing to make a statement. With that, this hearing is adjourned. Thank you all.

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



## A P P E N D I X

PREPARED STATEMENT OF HON. TEX HALL, CHAIRMAN, MANDAN, HIDATSA AND  
ARIKARA NATION

Good Afternoon Members of the Committee:

My name is Tex Hall and I am the Chairman of the Mandan, Hidatsa and Arikara Nation of North Dakota. I am also the Chairman of the Great Plains Tribal Chairmen's Association and the Coalition of Large Tribes. It is a pleasure to appear before you today.

As you know, the Land Buyback Program was enacted due to the settlement of the *Cobell v. Salazar* litigation. For many years, Indian people have known that the Federal Government was mismanaging our trust dollars, real property, and other non-monetary assets. We just did not know how to stop it. Finally, in 1996, my good friend, Eloise Cobell, and another group of brave Indian individuals had the courage to file suit against the United States for an accounting of our individual trust accounts. Through that litigation, we were finally given a partial opportunity to document the extent of that federal mismanagement.

Among the many examples of federal malfeasance that were presented to the Court was the U.S. Government's failure to address the inheritance and land ownership problems that it created by the passage and implementation of the General Allotment Act in 1887. This, as you may recall, was the federal statute which divided thousands of acres of Indian lands among various individual tribal members.

Because the Federal Government failed to arrive at a proper system for managing the inheritance of these allotted lands, some 150 tribes, my own included, now find themselves dealing with tens of thousands of individual trust parcels within the boundaries of our reservations which are owned by hundreds and in some cases even thousands of different individuals. Think about that for a moment, thousands of single parcels, scattered throughout our reservations, all of which have multiple owners and many of which are owned by well in excess of 100 different people. This situation is a nightmare.

According to DOI's own studies, 90 percent of those fractionated parcels are now located on just forty (40) reservations, including my MHA Nation. The chart contained in the DOI's Updated Buyback Implementation Plan, dated November 8, 2013, documents that roughly 33 percent of these fractionated interests are now located in the Great Plains/Aberdeen Area, and around another 24 percent are located in the Billings Region of the BIA. Thus, my friend from Fort Peck and I are here representing the Tribes who collectively face well in excess of 50 percent of these problems on a daily basis. On my reservation alone, we have 3,024 fractionated tracts with 91,707 separate fractional interests. This is largely because many MHA members now have an interest in more than one fractionated tract. It is also because, as a result of inter-tribal marriages, it is not uncommon for members of a given tribe to have a fractionated interest in lands on someone else's reservation.

Last week, I was honored to Chair a historic meeting of the tribal leaders of the Great Plains Tribal Chairmen's Association, the Montana-Wyoming Tribal Leaders Council and the Coalition of Large Tribes. The Tribes who are the members of these three organizations collectively represent in excess of 75 percent of the Plaintiffs in the *Cobell* litigation, and 25 of the 40 tribes most impacted by fractionation. Those 25 tribes have been discussing the Cobell Buyback program with DOI and with each other since it was first announced.

We all agree that the Buyback program is a wonderful and much needed initiative which was devised by some very well intended people. Unfortunately, virtually none of those people had any experience in acquiring or managing fractionated interests. They were Indian individuals, and/or lawyers with little experience in representing tribal governments, who only understood these problems from an academic perspective. So, while the buyback program was strongly supported by the 150 tribes most impacted by fractionation, it was also developed with virtually no tribal input.

I had the pleasure of talking with my friend Eloise Cobell prior to her death and she related that by the time that the Parties to the Cobell litigation were finally

reaching an agreement, both sides were exhausted from thirteen plus years of aggressive litigation. During the settlement talks, their primary focus was directed at the total amount of money to be paid to the individual Plaintiffs under the other provisions of the Settlement and how those monies were going to be divided up. So, it is clear to me that while both sides agreed on the benefits of a land buyback program, little attention was paid to how that program would have to operate in real life. The Indian Land Consolidation Act (ILCA) was already in place and it appears to provide for tribal participation, so those involved apparently thought that it could provide an effective vehicle for the expenditure of the monies that were being placed in the Land Consolidation Fund.

It is equally clear that when the Cobell Settlement was finally presented to the Congress, its advocates were scared of changing one word in any of the documents for fear of stalling that settlement. This has been verified to me by one of our tribal lawyers who actually staffed that bill for Senate Indian Affairs Committee. The one person who foresaw many of the problems we are now encountering and tried to address them was Senator Barrasso of Wyoming. Senator Barrasso pointed out the need to amend the Indian Land Consolidation Act to accommodate this new use in many of the same ways now proposed in the Daines and DeFazio bills. Unfortunately, Senator Barrasso's suggestions were drowned out by those who were saying "let's just get it done." Thus, the Claims Settlement Act of 2010 was passed without a series of much needed and strongly advisable amendments to ILCA.

Luckily, the Court has left us an opening to make these corrections. If you examine the Settlement itself, you will see that it states that the U.S. shall distribute the Land Consolidation Fund:

In accordance with the Land Consolidation Program authorized under 25 U.S.C. section 2201 et.seq. [ILCA], *any other applicable legislation enacted pursuant to this agreement*, and applicable provisions of this Agreement."

Because the Settlement itself does not require the use of Section 2201 as it existed at the time of the settlement, Congress clearly has the authority to amend ILCA to address the problems I am about to address:

#### **What Needs to be Changed?**

First, Congress needs to make it clear to the Administration that this is judgment money that belonging to those tribes who suffered the actual damages as a result of fractionation. As such, it should be generating interest for its owners. I and the other 25 Tribes at last week's meeting were thrilled that this position is advanced in the three separate pieces of legislation, H.R. 5020, introduced by Congressman Daines; H.R. 4694, introduced by Congressman DeFazio; and S. 2387, introduced by Senator Walsh. Unfortunately, only one of the three bills, H.R. 5020, advanced by Congressman Daines, recognizes that this money was authorized to address the actual damages that various tribal communities have suffered. As a result, 90 percent of that money rightfully belongs to the 40 tribes listed on page 13 of DOI's November 8, 2013 Implementation Plan. And, the remainder belongs to the other 110 tribes who have suffered actual damages as a result of the General Allotment Act.

This is not general Indian money, it is money authorized to correct the problems that have been and still are actually occurring in certain tribal communities. We ask the members of this Committee to remember this very important distinction.

Second, Congressman Daines correctly suggests that, for this very reason, Interior should be directed to immediately and permanently transfer the sums that it itself has recommended to the Tribes on the November 8, 2013 list, or to obligate and place the funds belonging to those tribes who do not want to manage their own buy back accounts into separate trust accounts to be held in the name of their individual tribal owner. This solves two problems. First, the interest generated on the funds transferred to the tribes will be generated through private banks and federally backed investment institutions, so it will not be coming from the U.S. Treasury and increasing the federal deficit. Second, it eliminates the need to spend those dollars in the ten year period provided for in the Settlement, because the funds will be considered obligated at the time of those transfers.

Third, the best way of insuring that these funds are managed properly is to eliminate the prohibition against the use of P.L. 93-638 for buyback implementation. By allowing the tribes to utilize P.L. 93-638 contracts, as all three bills suggest, and as the Tribes have been calling for since day one, we solve a multitude of problems. First, P.L. 93-638 allows the tribes to be compensated for the very real costs of negotiating their management agreements with the federal government. Second, it will allow the tribes to negotiate and manage their own purchases and limit Interior's role to just the non-contractible trust functions, approving the purchase price and transferring the title. This not only improves the effectiveness of the program, it



also eliminates the need for a lot of the federal staffing. Third, it allows the Tribes to design their own programs.

Thus, if Congress passes properly worded legislation, the Tribes who chose to implement their programs using "638" will be able to design and manage their own buyback efforts, negotiate their own overhead costs, utilize the interest generated on their local tribal investment accounts to acquire fractionated interests that Interior is not allowing them to spend buyback dollars on currently. Tribes are being impeded from spending buyback dollars on improvements, rights of way, and fee parcels. This undermines the effective use of larger blocks of land. Tribes should be allowed to decide what interests they want and need to buy. While the Settlement limits administrative cost to 15 percent, that is 15 percent of the total in the Land Consolidation Fund, not 15 percent of the small amount that DOI is currently allowing for tribal advertising and public relations efforts while keeping the remainder for its own use.

On my reservation, we have numerous parcels which contain oil and gas. We have asked Interior to allow us to acquire certain surface only interests, because we need control of the surface to build roads, extend pipelines and take other steps necessary to enhance our tribal oil and gas income. Unfortunately, Interior has not yet agreed to allow those surface only acquisitions. In fact, Interior has limited tribal involvement to many of the tasks necessary to make these acquisitions. This is not only wrong, it is highly illogical. Interior, to its credit, has openly stated that it cannot complete this buyback effort without the tribes, but when we try to get totally involved, they assert that current ILCA provisions limit their ability to accept our offers. To see an example of how this policy leads to failure, consider the Tribe which has suffered the most damage as a result of fractionation, Pine Ridge. DOI forced them into an advertising and public relations only agreement, it managed the appraisals and it decided which parcels were and were not available to acquisition. It also limited the tribe to just less than 24 months to implement this program. As a result, Pine Ridge was only able to utilize less than 50 percent of the \$125,427,372 that DOI itself said that the tribe was entitled to as a result of its damages.

One of the things that it is very important for the Committee to understand is that fractionation creates problems well beyond requiring DOI to manage an ever increasing number of trust accounts. It also slows and sometimes even curtails our tribal ability to build roads, install water lines, develop Internet connections, and utilize large sections of our reservations for economic development. It also generates a sizable amount of work for BIA representatives when developments of this nature have to be done. Thus, I find it hard to understand why Interior has, to date, insisted on focusing its attention and mandates on total estate acquisitions and on controlling so much of the process.

Finally, something that is not addressed by any of the pending bills, but needs to be included in any legislation that is passed, is the need to allow the tribes to establish their own fair market value for these acquisitions. At the present time, Interior's only focus is on the use of appraisals to determine how much can be spent for a particular acquisition. Those appraisals do not take adequate account of the improvements which exist on many of the fractionated parcels, and they completely fail to take into consideration the benefits that an entire tribal community will obtain from acquiring certain parcels. The current Settlement states that Fair Market Value shall be determined in accordance with Section 2214 of ILCA. That provision states:

The secretary may develop a system for establishing the fair market value of various types of land and improvements. Such system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such a system may govern the amounts offered for the purchase of interest in trust or restricted land under this chapter.

So, to put it simply, the Settlement does not direct the Secretary to apply any specific methodology. So to correct these problems, we are recommending that the Committee add a new subsection (b) to ILCA Section 2214 which reads something like this:

For purposes of a tribe's implementation of the Indian Land Consolidation Provisions of the Claims Settlement Act of 2010, the fair market value of a given acquisition shall be determined by a reasonable combination of the following factors:

1. The appraised value of the land and the improvements on the land;
2. The benefit of the acquisition to the tribe and the greater tribal community;
3. The average annual earnings of the land, and interests on the land;
4. The potential earnings from the land over the next ten years; and
5. Any other factors that the Secretary considers to be appropriate.

By applying these factors, we may not acquire as many fractionated interests, but we will be in a much better position to acquire those interests that are stifling our development. So, in short Mr. Chairman, I and the other impacted tribes are asking this Committee is to take the Daines bill, add our recommended changes, and pass it as quickly as possible because the clock on the buyback program is running.

Thank you for allowing me to appear here today. I will be happy to answer any questions that you may have.

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PREPARED STATEMENT OF HON. DAVE ARCHAMBAULT II, CHAIRMAN, STANDING ROCK SIOUX TRIBE

Dear Chairman Tester:

Let me thank you and the members of the Committee on Indian Affairs for conducting the oversight hearing on the *Improving the Trust System: Continuing Oversight of the Department of the Interior's Land Buy-back Program*. As Chairman of the Standing Rock Sioux Tribal Council, I write to comment on our Tribe's experience with the implementation of the Land Buy-back program. I appreciate the inclusion of my statement in the committee's record for the oversight hearing, and your consideration of our concerns moving forward.

President Obama deserves a great deal of credit for the *Cobell* settlement. In 2008, he visited Lakota Country and committed to a fair settlement in the *Cobell* litigation. He kept his promise. The payments to our landowners of their small share of the settlement are necessary and are overdue. Moreover, the Land Buy-back Program is an important first step toward addressing the myriad of problems caused by the General Allotment Act.

The second payment to eligible allottees should be released immediately. Undue delays in the long-awaited payments reduce the value of the settlement over time. This is extremely unfair to our Tribal members. It delays and diminishes the positive impact of the *Cobell* settlement on our Reservation economy.

With respect to the Buy-back Program, the *Updated Implementation Plan* identified 6,306 fractionated tracts and 227,133 purchasable fractionated tracts on the Standing Rock Indian Reservation – the most of any Indian Reservation in the United States. (DOI, p. 13). Consequently, the Land Buy-Back Program is very important to the Standing Rock Sioux Tribe.

Our Tribe's experience with the Buy-back Program demonstrates that –

- Congress should enact S. 2387. This would apply the Indian Self Determination and Education Assistance Act of the Land Buy-back program, providing for a greater Tribal role in the buy-back program and ensuring that accruing interest payments are applied to the program.
- In the meantime, the Buy-back Program should streamline the co-operative agreement process and include all four phases of the Buy-back Program, with full reimbursement of administrative costs.
- More funding and resources should be allocated for training and Tribal capacity building in TAAMS and GIS Arc View.
- Greater coordination between the Buy-back Program and the Tribes will enhance the acceptance rates by Tribal landowners.

**Congress Should Enact S. 2387 and Require the Secretary to Apply the  
Indian Self Determination and Education Assistance Act to the Buy-back Program**

I support S. 2387. This bill would require the Secretary of the Interior to apply the contracting provisions of the Indian Self Determination and Education Assistance Act of 1975 to the Land Buy-back Program. Accrued interest on the funds deposited for land consolidation should be provided to the Tribes for land purchases and administrative costs in operating the program.

Congress should reconsider the Indian Land Consolidation Act's exemption of ILCA cooperative agreements from the requirements of the Self-Determination Act. (25 U.S.C. §2212(b)(3)(C)). Applying the Self Determination Act and its implementing regulations to the Land Buy-back Program could streamline the cooperative agreement process and enhance program implementation at the Tribal level.

We recently entered a cooperative agreement to implement phase one of the Buy-back program. The negotiations were unnecessarily time-consuming. If the Self Determination Act were applied, the contract must be awarded or rejected within 90 days, with appeal rights and due process procedures for the Tribal applicant. (25 U.S.C. §450f(a)(2); 25 CFR §900.31). The process of developing Self Determination Act contracts and cooperative agreements is timely and transparent, with administrative appeals to resolve disputes. None of these rights apply to the cooperative agreement process with the Buy-back program. Instead, there are delays and uncertainty.

Congress could remedy this by enacting S. 2387. In the meantime, the Secretary's office should be more transparent and flexible in developing cooperative agreements with Tribes.

**Training and Tribal Capacity Building**

One important lesson to be learned is that TAAMS and Arc View GIS training and capacity-building for Tribes should be a first step in the *Cobell* Land Consolidation program. Yet the Buy-back Program ignores this responsibility.

Standing Rock requested TAAMS training from the Bureau of Indian Affairs one year ago, and our request remains unanswered. Funding and an administrative commitment to provide technical assistance in these areas will help ensure that the Land Consolidation program under the *Cobell* settlement is properly implemented.

### **Tribal Administrative Costs Should be Fully Reimbursed**

The operational concepts insisted upon by the Secretary's office have significant adverse fiscal impacts on Tribes. The refusal to include land acquisitions in Tribal cooperative agreements results in DOI's retaining \$111.3 million in the U.S. Treasury, the amount appropriated by Congress for land consolidation at Standing Rock. That money is ours. The Buy-back Program should immediately transfer these funds to Standing Rock under a cooperative agreement which includes land acquisition, enabling our Tribe to collect interest until the funds are expended on land purchases. The Secretary's decision to exclude land acquisitions from the cooperative agreements results in the loss of millions of dollars in interest income for the Standing Rock Sioux Tribe.

Moreover, the limit on administrative fees will reduce the amount of contract support available to Tribes under the cooperative agreements. This has been a significant problem with the Department of the Interior over many years, as illustrated by *Salazar v. Ramah Navajo Chapter*, 567 U.S. \_\_\_\_ (2012). At Standing Rock, the 15 percent ceiling for administrative expenses mandated for cooperative agreements under the Buy-back Program is estimated to cost our Tribe at least \$24,500.00 over two years. It is unlikely that Congress intended the Land Buy-back Program in the *Cobell* settlement to impose these costs on impoverished Tribes. This highlights the need for passage of S. 2387.

### **Conclusion**

Our great Chief Sitting Bull admonished our Tribe – "Let us stand together as one family... (for) the last piece of ground we possess." Allotment and homesteading decimated our land base, and we are attempting to work with the United States to remedy this. The Land Buy-back Program established in the *Cobell* settlement should be considered merely the first step in a long-term partnership to re-establish the Indian land base, at Standing Rock and throughout Indian Country.

Legislation applying Self Determination contracts to the Buy-back program should move forward. Funds allocated for land consolidation should be transferred immediately to the Tribes, with interest to be invested in land consolidation and Tribal administrative costs. Technical assistance and training in TAAMS should be emphasized and fully funded.

**On behalf of the Standing Rock Sioux Tribal Council, I reiterate our appreciation to the Committee on Indian Affairs for conducting this oversight hearing. We look forward to working with the Committee and with Interior Secretary Jewell, for the successful implementation of the program on the Standing Rock Indian Reservation.**

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PREPARED STATEMENT OF HON. MARK L. AZURE, PRESIDENT, FORT BELKNAP INDIAN COMMUNITY

Good Afternoon Mr. Chairman, Committee Members and guests, and thank you for providing the Assiniboine and Gros Ventre Tribes of Fort Belknap an opportunity to express our concerns about the oversight of the Land Buy-back Program enabled by the *Cobell* Settlement. My name is Mark Azure and I am the President of the Fort Belknap Indian Community Council, the governing body of the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation in Montana. I am a United States Army Veteran and a member of the Assiniboine Tribe of Fort Belknap. The Fort Belknap Indian Community consists of over 7,000 enrolled members of the two Tribes, for whom I am pleased to offer these comments.

The Fort Belknap Indian Reservation was allotted through a separate act of Congress in 1921. Since that time, many original allottees died without wills, creating a significant fractionated interest problem. In the 1920s there were 1,189 individual allotments issued covering over 650,000 acres on Fort Belknap. As early as the 1950s the Tribal Council utilized various sources of funding to purchase land from heirs of the original allotments. Our fathers and grandfathers on the Tribal Council saw the detrimental effect that fractionated interests was having on the ability to use lands.

In recent years the source of income to purchase lands has dried up. According to the Department of Interior, in 2012, the Fort Belknap Reservation had 3,007

fractionated tracts encompassing 570,883 acres with 55,329 separate interests that could potentially be purchased if sellers were willing.

At Fort Belknap, we have contracted a Tribal Land Department from the BIA to help administer Tribal lands under a P.L. 93-638 contract for over thirty-five years. To satisfy our tribal goals, the tribal government contributes \$180,000 annually under its aid to tribal government contract. This action shows our deep commitment to tribal land acquisition. We also have experience with buying allotted lands from enrolled members. In fact, we have within the last few years spent \$778,000 on land acquisitions in an attempt to purchase back land for our tribes, since the inception of our Land Purchase program in the 1970s, over 150,000 acres of allotted lands have been purchased and added to Tribal inventories. Many other acres have been exchanged and consolidated. While these numbers may seem large, unfortunately, our lack of resources held back our overall plan to purchase fractionated interests from willing sellers and solve the large remaining fractionated interest problem that has plagued economic development.

Our staff has attended national meetings of the Large Land-based Tribes for decades, emphasizing the need for Tribes to address fractionated interests. We have patiently waited “our turn” while other Tribes were successful in receiving funds to purchase fractionated interests.

In 2012, we were excited to see the potential for our Tribal Land Purchase plans to receive funding through the Cobell Settlement. We looked at the December 18, 2012, Land Buyback Plan of the Department of Interior, and were ready to get moving. We attended numerous “listening” conferences, and were frustrated that our many suggestions, made by Tribal leaders and staff with decades of experience and focus on enabling Tribal-run programs, seemed to receive little consideration.

When no specific contracts were even proposed by March, 2013, we submitted a draft contract in April, 2013, to get the process moving. Five months to identify and enable existing Tribal programs to begin purchasing lands seemed to be long enough. We were then and continue to be very concerned that Congress set a ten year limit on the availability of these funds, beginning in November, 2012.

Unfortunately, as of April 2014 we had received no feedback on our written proposal and agreement of April, 2013. Instead, DOI staff proposed a standardized “boilerplate” agreement to all Tribes in June, 2013. While somewhat discouraged about no response to our written proposal, we submitted a new agreement based on the “boilerplate” agreement in late June, 2013. We incorporated most of the assurances and procedural steps the DOI had sought in their draft, but upgraded the agreement to address needs at Fort Belknap.

DOI, almost a year after funds became available for purchasing lands, in the fall of 2013, published a process whereby Tribes could contract with DOI, but advised that they wanted detailed proposals, and then they alone would respond and prepare their “boilerplate” agreement, with no changes to be expected from their prepared draft.

We have reluctantly assented to this process and submitted a letter of interest and a resolution to the DOI. It is now twenty one months into the 120 month timeframe whereby these funds will be available. We know people are interested in selling interests. We have applications for land sales for millions of dollars through our existing processes. Regrettably, we are still unable to purchase these lands.

Two of the goals in the 2012 DOI Buy-back Plan were to “maximize tribal participation in the program” and to “establish and maintain clear communication throughout its operation”.<sup>1</sup> These were appropriate goals. We embraced these goals, and spent significant Tribal resources in attending meetings and drafting agreements to implement these goals. We operated under good faith that DOI meant to implement these goals. It is now more than two years after those goals were drafted, and we are discouraged that neither of these goals are progressing much.

As far as we know at this point, the Rocky Mountain Regional Office of the BIA does not have a clear plan to implement the Land Buy-back Program for Rocky Mountain Regional Tribes. Our attempts to initiate a specific process here at Fort Belknap have had no response. We know that historically, a single transaction to be recorded in the Billings Regional Title plant has taken six months. We cannot comprehend how that office could contemplate processing the 50,000+ transactions anticipated in the Buy-back plan from Fort Belknap alone over the next several years. We have not seen an upgrade in volume capacity in that very important office.

These funds could mean an unprecedented influx of monies to our local economy. At Fort Belknap, the DOI projected \$54 million of the total available would be need-

<sup>1</sup> Updated Implementation, Land Buy-back Program for Tribal Nations, Summary, Page 2 of 32 (December, 2012).

ed to fund land purchases. These funds will impact our local economy in multiple ways. If we could administer the purchase program, local jobs will be created. The services needed to support these administrative efforts will support local businesses. Purchase funds will go to individuals who often are unemployed otherwise. Their families and extended families will all benefit, as will local businesses. Tribal government will benefit from the lease and use of lands purchased.

But none of this is happening now, as the process the DOI is implementing is uncommunicative and ignores Tribal input. We have been saying the same things for over a year. The transcripts of the listening conferences will affirm our position that we are ready and willing and want to administer these funds now.

The *Cobell* Settlement was a landmark in U.S. government and tribal relationships. It sought to remedy a long-standing problem of failed government administration of resources. Its focus was to redress problems created for individuals by failed government process. Yet, there are clear flaws in the implementation of the plan thus far.

The amendment to the Indian Consolidation Act introduced by Montana Congressman Steve Daines does however bring some relief to the situation. The amendment, if passed, would provide choices to Indian Country that were not included in the original legislation. For instance, it extends the timeframe of the program from ten years to fifteen years, which would help us make up for all the lost time in the initial buy back implementation. Secondly, the amendment gives the authority to the DOI to deposit funds into an interest bearing account, so that tribes can greater benefit from the settlement. Lastly, it provides the option for tribes to contract or compact. This gives tribes more control over how their program will be organized and implemented. This allows for each tribe to work in the way that best suits them; since each tribe represents a separate and unique nation. In addition, the inclusion of this amendment would better encourage self-sufficiency, which is the intent of this program.

Our leadership has often commented that it is ironic that funds paid to redress problems created by failed government administration should be proposed to be tightly administered by the same bureaucracy that created the problem.

While not perfect, by any means, our people have elected leaders who have administered Tribal land buy-back programs for decades. We sincerely would like the opportunity to obtain the funds designated by Congress, apply them to our existing programs, upgrade those programs where necessary, and get busy with the land purchases Congress assigned these funds for in the settlement process.

We know that the DOI has spent a lot of these monies in the last twenty one months on hearings, staff, and forms. We are quite concerned that millions of dollars which should have been spent on local efforts and purchasing lands are now gone, without the purchase of a single square foot of land at Fort Belknap! We respectfully ask this body to provide oversight and mandate corrections to get these monies to Tribes to facilitate Congress' intent to purchase fractionated interests and to strongly consider supporting the amendment that Congressman Daines is proposing to the Indian Consolidation Act.

Thank you again for the opportunity to provide our perspective.

