

**IMPLEMENTING THE COBELL SETTLEMENT:
MISSED OPPORTUNITIES AND LESSONS LEARNED**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Thursday, April 3, 2014

Serial No. 113-67

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

87-534 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
PETER A. DeFAZIO, OR, *Ranking Democratic Member*

Don Young, AK	Eni F. H. Faleomavaega, AS
Louie Gohmert, TX	Frank Pallone, Jr., NJ
Rob Bishop, UT	Grace F. Napolitano, CA
Doug Lamborn, CO	Rush Holt, NJ
Robert J. Wittman, VA	Raúl M. Grijalva, AZ
Paul C. Broun, GA	Madeleine Z. Bordallo, GU
John Fleming, LA	Jim Costa, CA
Tom McClintock, CA	Gregorio Kilili Camacho Sablan, CNMI
Glenn Thompson, PA	Niki Tsongas, MA
Cynthia M. Lummis, WY	Pedro R. Pierluisi, PR
Dan Benishek, MI	Colleen W. Hanabusa, HI
Jeff Duncan, SC	Tony Cárdenas, CA
Scott R. Tipton, CO	Jared Huffman, CA
Paul A. Gosar, AZ	Raul Ruiz, CA
Raúl R. Labrador, ID	Carol Shea-Porter, NH
Steve Southerland, II, FL	Alan S. Lowenthal, CA
Bill Flores, TX	Joe Garcia, FL
Jon Runyan, NJ	Matt Cartwright, PA
Markwayne Mullin, OK	Katherine M. Clark, MA
Steve Daines, MT	<i>Vacancy</i>
Kevin Cramer, ND	
Doug LaMalfa, CA	
Jason T. Smith, MO	
Vance M. McAllister, LA	
Bradley Byrne, AL	

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Legislative Counsel*
Penny Dodge, *Democratic Staff Director*
David Watkins, *Democratic Chief Counsel*

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

DON YOUNG, AK, *Chairman*
COLLEEN W. HANABUSA, HI, *Ranking Democratic Member*

Dan Benishek, MI	Tony Cárdenas, CA
Paul A. Gosar, AZ	Raul Ruiz, CA
Markwayne Mullin, OK	Eni F. H. Faleomavaega, AS
Steve Daines, MT	Raúl M. Grijalva, AZ
Kevin Cramer, ND	Peter A. DeFazio, OR, <i>ex officio</i>
Doug LaMalfa, CA	
Doc Hastings, WA, <i>ex officio</i>	

CONTENTS

	Page
Hearing held on Thursday, April 3, 2014	1
Statement of Members:	
Hanabusa, Hon. Colleen W., a Representative in Congress from the State of Hawaii	3
Prepared statement of	5
Young, Hon. Don, a Representative in Congress from the State of Alaska .	1
Prepared statement of	2
Statement of Witnesses:	
Azure, Mark L., President, Fort Belknap Tribal Council, Fort Belknap Indian Community	39
Prepared statement of	40
Berrey, John, Chairman, Quapaw Tribe of Oklahoma	24
Prepared statement of	26
Burke, Gary, Chairman, Confederated Tribes of the Umatilla Indian Res- ervation	33
Prepared statement of	34
Questions submitted for the record	38
Finley, Michael O., Chairman, Confederated Tribes of the Colville Res- ervation	19
Prepared statement of	21
Questions submitted for the record	23
Roberts, Lawrence S., Principal Deputy Assistant Secretary, Indian Af- fairs, U.S. Department of the Interior	7
Prepared statement of	9
Questions submitted for the record	11
Stafne, Grant, Councilman, Tribal Executive Board, Fort Peck Assini- boine and Sioux Tribes	42
Prepared statement of	43
Questions submitted for the record	47
Additional Materials Submitted for the Record:	
DeFazio, Hon. Peter A., a Representative in Congress from the State of Oregon, Prepared statement of	54
Grijalva, Hon. Raúl M., a Representative in Congress from the State of Arizona, Prepared statement of	54

OVERSIGHT HEARING ON IMPLEMENTING THE COBELL SETTLEMENT: MISSED OPPOR- TUNITIES AND LESSONS LEARNED

**Thursday, April 3, 2014
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, DC**

The subcommittee met, pursuant to notice, at 2:08 p.m., in room 1324, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Daines, Hastings, Hanabusa, and Grijalva.

Mr. YOUNG. The subcommittee will come to order. I note a presence of a quorum. We are meeting here today to hear testimony on implementing the Cobell Settlement. And under the Committee Rule there will be an opening statement by the Chairman and the Ranking Member, and anybody else can submit their statements.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. Before we start the day's hearing I want to say a word about Jimmy Newton, Chairman of the Southern Ute Indian Tribe. Chairman Newton passed away on Monday at the age of 37. Jimmy began his service to the Southern Ute Indian Tribe 2003. In 2011 he was the youngest person to be elected to lead the tribe. Jimmy often traveled to Washington to advocate for his tribe, as well as the Ute Mountain Utes and the Utes of Utah.

Under his leadership, the Southern Ute Tribe continued in its role as premier Indian tribal producer of natural gas and other resources, and sought to assist other tribes to improve their economic lives and the lives of their people. Men of Jimmy's character and compassion are rare, and we were lucky to have known him, even for the brief period he was with us.

Today the subcommittee will review the Land Buy-Back Program of the Tribal Nations. This is a \$1.9 billion program through which the Secretary of the Interior will purchase, on a willing-seller basis, fractionated Indian lands and consolidate them in tribal ownership. Fractionation is a phenomenon that has plagued Indian Country for more than a century, and is the major reason why large tracts of Indian lands are unused.

I voted for the Claims Resolution Act, but it was with reservations. Several aspects of the deal were flawed, and neither the administration nor the plaintiffs agreed to fix them. While then-Ranking Member Doc Hastings filed an amendment to improve the Settlement in accordance with resolutions adopted by major tribal organizations, House Majority Democrat leaders refused to allow

any changes. Nevertheless, Congress determined that with its flaws, the deal was better than more years of fruitless litigation.

Unfortunately, the Settlement's flaws identified by tribal leaders and the major tribal associations in 2010 are causing real problems that we will hear about today. The purpose of today's hearing is to examine what is going on with the Buy-Back Program, what is going wrong with it, what is going right with it, and what can Congress do to improve it in consultation with tribal leaders and individual land owners.

The Land Buy-Back Program was slow to launch. It appears the Department has recently made large purchase offers acquired by thousands of acres of land, and built up an Indian education scholarship fund. It must be pure coincidence that these good things began to occur only after the Department learned about this hearing.

Before I turn to the Ranking Member for her opening statement, I would like to comment on a remark made in the written statement by Mr. Roberts today. Mr. Roberts says the Cobell Settlement "opened a new chapter". This phrase, "opened a new chapter," has been a refrain by this administration with respect to tribal relations, as though no deal was possible, but for this President. In fact, the Cobell Settlement is merely a final version of legislation originally proposed in 2005 by House and Senate committee leaders following months of intense mediation they supervised. The only other major difference between the 2005 deal and the present one is this administration offers less to the Indians and more to the trial lawyers. And that really upsets me.

The Settlement is not the opening of a new chapter, but the continuation of a story that has been written. There remains work to do, and I look forward to hearing from the tribal leaders on how to make the Buy-Back Program work to their benefit.

And, with that, I will recognize the Ranking Member.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF DON YOUNG, CHAIRMAN, SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

Before we start today's hearing, I want to say a word about Jimmy Newton, Chairman of the Southern Ute Indian Tribe. Chairman Newton passed away on Monday at the age of 37.

Jimmy began his service to the Southern Ute Indian Tribe in 2003 and in 2011, he became the youngest person to be elected to lead the tribe. Jimmy often traveled to Washington to advocate for his tribe as well as the Ute Mountain Utes and the Utes of Utah.

Under his leadership, the Southern Ute Tribe continued in its role as the premier Indian tribal producer of natural gas and other resources and sought to assist other tribes improve their economies and the lives of their people. Men of Jimmy Newton's character and compassion are rare and we are lucky to have known him, even for the brief period he was with us.

Today the subcommittee will review the Land Buy-Back Program for Tribal Nations. This is a \$1.9 billion program through which the Secretary of the Interior will purchase on a willing-seller basis fractionated Indian lands and consolidate them in tribal ownership. Fractionation is a phenomenon that has plagued Indian Country for more than a century and it is a major reason why large tracts of Indian lands are unused.

I voted for the Claims Resolution Act, but it was with reservations. Several aspects of the deal were flawed and neither the Administration nor the Plaintiffs agreed to fix them. While then-Ranking Member Doc Hastings filed an amendment to improve the Settlement in accordance with resolutions adopted by major tribal organizations, House Majority Democrat Leaders refused to allow any changes.

Nonetheless, Congress determined that with its flaws, the deal was better than more years of fruitless litigation.

Unfortunately, the Settlement's flaws identified by tribal leaders and the major tribal associations in 2010 are causing real problems that we will hear about today.

A purpose of today's hearing is to examine what's going right with the Buy-Back Program, what's going wrong with it, and what can Congress do to improve it in consultation with tribal leaders and individual Indian landowners.

The land buyback program was slow to launch. It appears the Department has recently made large purchase offers, acquired thousands of acres of lands, and built up an Indian education scholarship fund. It must be pure coincidence that these good things began to occur only after the Department learned about this hearing.

Before I turn to the Ranking Member for her opening statement, I must comment on a remark made in the written statement of Mr. Roberts, today's Administration witness.

Mr. Roberts says the Cobell Settlement legislation [quote] "opened a new chapter ..." [end quote].

This phrase—"opened a new chapter"—has been a refrain of the Obama administration with respect to tribal relations. As though no deal was possible but for this President.

In fact, the Cobell Settlement is merely the final version of legislation originally proposed in 2005 by House and Senate Committee Leaders following months of intense mediation they supervised.

About the only major difference between the 2005 deal and the present one is that this administration offered less to the Indians and more to the trial lawyers.

The Settlement is not the opening of a new chapter, but the continuation of a story still being written.

There remains work to do and I look forward to hearing from tribal leaders on how to make the Buy-Back Program work to their benefit.

**STATEMENT OF HON. COLLEEN W. HANABUSA, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII**

Ms. HANABUSA. Thank you, Chairman Young. And thank you to our witnesses. I know our tribal leaders have come a long way to be here, and it is good to see you.

Mr. Chairman, for more than a century, the Federal Government has been the trustee of funds for individual Indians. The amounts in these funds are generated from leases on lands held in trust for purposes such as grazing, timber, agriculture, and energy development. Over the years, the United States has struggled to execute its fiduciary duties with proper care. Systemic and appalling breaches of fiduciary duty resulted in over a decade of class action litigation, culminating in the 2009 Cobell Settlement.

Under the terms of the Settlement, the United States has agreed to pay a total of \$3.4 billion to compensate trust beneficiaries, \$1.5 billion of which was to pay directly to a class of approximately 500,000 individuals, and \$1.9 billion of which was to be used to address the problem of land fractionation on Indian reservations around the country. The Settlement, which passed Congress in late 2010, became final in November of 2012, following the exhaustion of appeals through the U.S. Supreme Court.

Since that time, the Department of the Interior has begun to implement the Settlement. The first round of payments to individuals was sent out in 2013, and I understand a second round of payments should be sent out later this year. I am hoping the Department can shed some light on the timeframe of those for today's hearing.

The Department is now also working on consolidated fractionated land shares with the \$1.9 billion dollars allocated for that purpose,

and have begun making offers to tribes. The Senate Committee on Indian Affairs had a hearing specifically on implementation of the Land Buy-Back Program late last year, at which tribes expressed some concern over the Department's methods. I hope that the Department can inform us on how they are responding to those concerns today.

Mr. Chairman, I applaud your leadership in holding this hearing, and I regret that, due to another commitment, I won't be able to stay for the entire duration. I would be remiss, however, if I didn't address a few issues before I left.

First, I know that the Department has been working hard to implement the Settlement. But with regard to the Land Buy-Back Program, they only have 10 years to spend the \$1.9 billion meant to consolidate fractionated land shares. I think it is wise for Congress to check on their progress now. And I think we should be open to doing whatever we need to to help them implement the Buy-Back Program in a way that will benefit tribes. And that was what its intended purpose was.

Second, I want to express my concern with some of the rhetoric associated with the Cobell Settlement. Specifically, I take issue with the way Settlement funding was portrayed in the Majority's views and estimates letter to the President's Fiscal Year 2015 budget. Settlement funds are not appropriations, nor are they hand-outs. They are necessary compensation to resolve a legal dispute. Let us not forget that key point when we discuss the dollar amounts associated with the Cobell Settlement; it is what the government owes to make things right.

Finally, the grave mismanagement of funds that precipitated the Cobell Settlement can never be allowed to happen again. The only way the United States laid claim to the entire continent was with the acquiescence of tribal governments that traded land for special rights and privileges in treaties and other legal documents. The United States took on the responsibility to act as the fiduciary to the various tribes of indigenous peoples. It did this willingly, and it got a much greater benefit than it has given back. I say all this because the only way such an outrageous breach of fiduciary duty could occur, as that precipitating the Cobell Settlement litigation, is for there to be an institutionalized culture that does not understand and take seriously this reality. Let the Cobell Settlement be a reminder.

Moreover, Mr. Chairman, our Nation's history is littered with dark periods in which it was not living up to the duty it took on toward tribes. And each time it caused us to look back and have to repair the outcomes of its misguided policies. Yet, too often, I see us repeating the same mistakes. I see it in the Supreme Court's *Carcieri* decision and various trust cases, which construe that responsibility narrowly. I see it in a need for Native Hawaiian recognition and the lack of support from some of my colleagues for Native Hawaiian programs.

None of these concepts should be issues for debate. The Secretary of the Interior was permitted to take land into trust for all federally recognized tribes because Assimilation Era policies wrongfully took away over 90 million acres of tribal lands. The United States serves as a trustee toward tribes because, in exchange, it was able

to spread across the continent and become the world power that it is today. Programs aimed at benefiting Native Hawaiians were put in place because the United States was complicit in the overthrow of the Kingdom of Hawaii. It is time for us to stop making the same mistakes over and over again.

[The prepared statement of Ms. Hanabusa follows:]

PREPARED STATEMENT OF COLLEEN HANABUSA, RANKING MEMBER, SUBCOMMITTEE
ON INDIAN AND ALASKA NATIVE AFFAIRS

Thank you, Chairman Young.

And thank you, to our witnesses—I know our tribal leaders have come a long way to be here. It's good to see you.

Mr. Chairman, for more than a century the Federal Government has been the trustee of funds for individual Indians. The amounts in these funds are generated from leases on lands held in trust for purposes such as grazing, timber, agriculture, and energy development. Over the years, the United States has struggled to execute its fiduciary duties with proper care. Systemic and appalling breaches of fiduciary duty resulted in over a decade of class action litigation culminating in the 2009 Cobell Settlement.

Under the terms of the settlement, the United States has agreed to pay a total of \$3.4 billion to compensate trust beneficiaries—\$1.5 billion of which is to be paid directly to a class of approximately 500,000 individuals and \$1.9 billion of which is to be used to address the problem of land fractionation on Indian reservations around the country.

The settlement, which passed Congress in late 2010, became final in November of 2012 following the exhaustion of appeals through the U.S. Supreme Court. Since that time, the Department of the Interior has begun to implement the settlement. The first round of payments to individuals was sent out in 2013, and I understand the second round of payments should be sent out later this year. I am hoping the Department can shed some light on the timeframe for those today.

The Department is now also working on consolidating fractionated land shares with the \$1.9 billion allocated for that purpose and have begun making offers to tribes. The Senate Committee on Indian Affairs held a hearing specifically on implementation of the Land Buy-Back Program late last year, at which tribes expressed some concerns over the Department's methods. I hope that the Department can inform us on how they are responding to those concerns today.

Mr. Chairman, I applaud your leadership in holding this hearing and I regret that, due to another commitment, I won't be able to stay for its entire duration. I would be remiss however, if I didn't address a few issues before I leave. First, I know the Department has been working hard to implement the settlement, but with regard to the Land Buy-Back Program, they only have 10 years to spend the \$1.9 billion meant to consolidate fractionated land shares. I think it wise for Congress to check on their progress now and I think we should be open to doing whatever we need to do to help them implement the Buy-Back Program in a way that will benefit tribes as it is intended.

Second, I want to express my concern with some of the rhetoric associated with the Cobell Settlement. Specifically, I take issue with the way settlement funding was portrayed in the Majority's Views and Estimates letter on the President's Fiscal Year 2015 budget. Settlement funds are not appropriations nor are they handouts. They are necessary compensation to resolve a legal dispute. Let us not forget that key point when we discuss the dollar amounts associated with the Cobell Settlement.

Finally, the grave mismanagement of funds that precipitated the Cobell Settlement can never be allowed to happen again. The only way the United States laid claim to an entire continent was with the acquiescence of tribal governments that traded land for special rights and privileges enshrined in treaties and other legal documents. The United States took on the responsibility to act as a fiduciary to the various tribes of indigenous peoples—it did this willingly and it got a much greater benefit than it has given back. I say all of this because the only way such an outrageous breach of fiduciary duty could occur—as that precipitating the Cobell litigation—is for there to be an institutionalized culture that does not understand and take seriously this reality. Let the Cobell Settlement be a reminder.

Moreover, Mr. Chairman, our Nation's history is littered with dark periods in which it was not living up to the duty it took on toward tribes and each time, it caused us to look back and have to repair the outcomes of misguided policies. Yet, too often I see us repeating the same mistakes. I see it in the Supreme Court's

Carcieri Decision and various trust cases which construe that responsibility narrowly. I see it in the need for Native Hawaiian Recognition and the lack of support from some of our colleagues for Native Hawaiian programs. None of these concepts should be issues for debate. The Secretary of the Interior was permitted to take land into trust for all federally recognized tribes because Assimilation Era policies wrongfully took away over 90 million acres of tribal lands. The United States serves as a trustee toward tribes because in exchange, it was able to spread across the continent and become a world power. Programs aimed at benefiting Native Hawaiians were put in place because the United States was complicit in the overthrow of the Kingdom of Hawaii.

It is time for us to stop making the same mistakes over and over again.

I yield back.

Ms. HANABUSA. And I yield back, and I do want to say something. You saw me smile when he made a comment about trial lawyers. He does it on purpose, because I am a lawyer. It wasn't about anything else he said, it was because he was taking his usual ding at me.

[Laughter.]

Ms. HANABUSA. But I yield back. Thank you.

Mr. YOUNG. I thank the madam for her comments about this bill, and rightfully so. And also the last part of it, too. Thank you.

At this time I would like to recognize the Chairman, Doc Hastings, for introduction of his witness.

Mr. HASTINGS. Thank you very much, Mr. Chairman, and thank you for having this hearing today. It is my pleasure to introduce the second witness, at least on my list, Chairman Michael Finley of the Confederated Tribes of the Colville. Chairman Finley and I became acquainted when this issue was going through its process. And at that time, my district did not include part of the Colville Reservation. But I felt that the concerns that he was talking to me about that time warranted more of my involvement. And, as you mentioned in your opening statement, we did have an amendment to make some corrections.

But, since redistricting now, part of the Colville Reservation is in my district. Although I know that the Chairman does not live in my district, I can claim at least part of him. But it is my pleasure to introduce to you and to the committee, Michael Finley, who is the Chairman of the Confederated Colvilles. Michael, good seeing you.

Mr. YOUNG. We thank you, Mr. Chairman. And, welcome, by the way.

And now, Mr. Daines, would you introduce the other witness that comes from your district?

Mr. DAINES. Yes, thank you, Mr. Chairman. It is truly my honor to introduce two distinguished tribal leaders from Montana. The first is President Mark Azure of the Fort Belknap Tribal Council from the Fort Belknap Indian Community. As I have traveled around Montana, I have heard a lot from Indian Country related to this issue of the Cobell Settlement and fractionated lands. In fact, in Montana, we have seven federally recognized tribes, and have some of the most fractionated country in the United States. In fact at Fort Belknap, there are 5,352 tracks held in trust, and 3,024 fractionated tracks with purchasable interest alone.

In addition to President Azure, we are also pleased to have Councilman Grant Stafne, on the Tribal Executive Board of the Fort Peck Assiniboine & Sioux Tribes. Again, they are in the Fort Peck. We have 7,463 tracks held in trust, 4,005 are in 21 fractionated tracks with purchasable interest.

So, I am grateful to have these two leaders from Montana with us here today who are living right in the middle of what is going on with the Cobell Settlement. And, with all due respect to our distinguished Ranking Member, I do think the lawyers seem to be winning right now, and the folks on the other end aren't. So let's see if we can change that score.

Mr. YOUNG. I do think the gentleman, and I can't agree with you more, is right, the idea of this was to solve a problem. And I will tell you one thing, because there is a time limit, if we can't do anything else we ought to extend that time limit. Because my understanding, the settlement, if it isn't dispersed and making these lands consolidated, the money goes back to the Treasury. And it is a settlement, and it shouldn't do that.

So, Mr. Chairman, I hope you listened to that very carefully.

And I want to welcome the panel and thank you for being here.

Mr. Roberts, you are the first one that is going to testify. And I apologize for you being at the end of the table. There is nothing significant about that, and I want you to know that, Mr. Roberts. You are in good shape. Go ahead.

Mr. ROBERTS. I am in good company here with all these tribal leaders, Chairman.

Mr. YOUNG. Yes.

Mr. ROBERTS. Thank you.

Mr. YOUNG. Yes.

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

Mr. ROBERTS. Good afternoon, Chairman Young, Chairman Hastings, Ranking Member Hanabusa, other members of the committee. Thank you for inviting us here to testify today. My name is Larry Roberts. I am the Principal Deputy Assistant Secretary for Indian Affairs. I answer directly to Assistant Secretary Kevin Washburn. And I am a member of the Oneida Nation of Wisconsin.

In 2010, Congress did enact this historic legislation. And, Chairman, I heard you take a quote out of the new chapter there. And I think what we really meant by, or what I meant by that new chapter language is that over the years that Cobell was being litigated it really caused a lot of consternation between tribes and the Department of the Interior, such the fact that Assistant Secretary Washburn says all the time if Cobell hadn't been settled, he would not have taken that job, because the discord between Interior and tribes was palpable.

And so, by settling that litigation, it allowed us to move forward. And what we are focused on at the Department of the Interior here is the legislation that you all passed provides \$1.9 billion to return lands to tribes. And all of the future income that is returned, all the future income of those lands that are returned to tribes, that future income is going to belong to tribes.

And so, not only that, but by purchasing these fractionated interests, and we have heard about the large amounts there, tribal members who want to sell, it is a voluntary program. If they want to sell they are going to receive fair market value, and they are going to infuse money into their tribal communities.

So, approximately 90 percent of all the purchasable fractional interests are located within 40 reservations. So 90 percent of the interests are in 40 reservations that we are aiming to consolidate. The Pine Ridge Reservation alone accounts for 8 percent of all of those interests. In Montana and Wyoming, if you look at those reservations in both Montana and Wyoming, we have targeted over \$406 million to purchase lands to return to tribes.

Tribal leadership and involvement is critical, absolutely critical, to the success of the program. We, Kevin and I, and the Department of the Interior, know that the best proponents of this program are tribal leaders themselves. We most recently held an open solicitation to request expressions of interest from tribes wanting to participate in the program. Nearly 60 tribes responded. And that 60-tribe response rate, it shows the support and interest in the goals of the program by tribal leadership.

While the Department is willing to run a program without a formal tribal cooperative agreement, if a tribe prefers, the Department hopes to enter into cooperative agreements with as many tribes as possible to implement the Buy-Back Program. Again, we know that tribes are going to be most effective in explaining the benefits and talking about the program to their own communities.

With regard to cooperative agreements being key, we have announced three cooperative agreements with tribes, and we anticipate announcing more soon. One goal, a goal of the Buy-Back Program, is to spend as much of the fund as possible on acquiring land, and as little as possible on the administration of the Buy-Back Program. So I know tribes are concerned about the cooperative agreement process. Heard directly from them about it, the cooperative agreement process, being burdensome and overly complex, and we are going to look at ways to improve that process so that everyone's time and attention can focus on making the program as successful as possible.

We have also heard from tribes that the fund should be invested to generate interest, and that the program should be eligible for 638 contracting. The legislation doesn't provide for the Department to either invest the fund or to enter into 638 contracts.

Over the last 4 months, the Buy-Back Program has returned the equivalent of over 40,000 acres, collectively, to the Oglala Sioux Tribe, the Makah Tribe, and the Rosebud Sioux Tribe. We have issued over 18,000 offers to individuals. And, in fact, we have returned over 40,000 acres specifically, just to the Oglala Sioux Nation, alone. And we have made payments of over \$14 million over the last 4 months, over \$14 million, to Pine Ridge allottees.

So, it is support from the leadership of Chairman Greene from Makah, it is support from tribal leadership, like President Brewer from Oglala Sioux, that has been critical to this progress.

So I think the level of interest expressed by tribes over the past year demonstrates the importance of the program, and our collective desire to make it be successful. I know all of these tribal lead-

ers are here today because they want the program to be successful, and they want it to be implemented within Indian Country.

Restoring tribal homelands is one of our highest priorities, and the interests are almost entirely within existing reservations.

We appreciate the committee's interests in the Buy-Back Program, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Roberts follows:

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

I. INTRODUCTION

Good afternoon, Chairman Young, Ranking Member Hanabusa, 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 "Implementing the Cobell Settlement."

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, \$1.9 billion 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 nearly 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 purchasable fractional interests are located within 40 reservations. The Pine Ridge Reservation alone accounts for over 8 percent of the purchasable fractional interests.

The Cobell case came about in part because of a very serious problem created by Federal laws on allotment. The settlement was designed to address some of those longstanding problems. The Land Buy-Back Program for Tribal Nations (Buy-Back Program) is one tool that will help alleviate the impacts of fractionation. A goal of the Buy-Back Program is to spend as much of the Fund as possible on acquiring land and as little as possible on administration of the Buy-Back Program. 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. For example, over the last 4 months the Buy-Back Program has transferred the equivalent of over 30,000 acres of land to the Oglala Sioux Tribe. In the short term, much of the money paid to obtain the interests will be spent in these tribal communities. In the long-term, transferring millions of acres of land to tribes will ultimately strengthen each tribal community and generate economic and generational benefits to those communities. Tribal acquisition of fractionated lands will "unlock" those lands, making them available to support economic development to benefit tribal members. This important work can succeed only with the collaborative involvement of tribal leaders and their communities. As sales occur, the Buy-Back Program will contribute part of the Fund (up to \$60 million) to the Cobell Education Scholarship Fund—an initial contribution to the scholarship fund, totaling nearly \$580,000, has already begun.

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 of the Interior established the Land Buy-Back Program for Tribal Nations (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. In recognition of the complexity and importance of the Buy-Back Program, it was established in the Office of the Deputy Secretary. The Department also established an Oversight Board, chaired by the Deputy Secretary. The Oversight Board includes the Solicitor, the Assistant Secretary-Indian Affairs,

the Director of the Bureau of Indian Affairs, and the Special Trustee for American Indians.

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

- Sent offers to nearly 19,000 landowners exceeding \$150 million.
- Transferred land to tribal trust ownership for three tribes, totaling over 40,000 acres through purchases from willing sellers.
- Paid over \$12 million dollars to Indian landowners across the United States.
- Entered into cooperative agreements, totaling over \$1.4 million, with the Oglala Sioux Tribe, Confederated Salish and Kootenai Tribe, and Northern Cheyenne Tribe, enabling in part the involvement of over 20 full-time tribal employees.
- Hired 59 full-time employees and expended approximately \$8 million of the overall implementation/administrative portion of the fund:
 - Outreach \$1.8 million;
 - Land Research \$1.1 million;
 - Valuation \$1.2 million;
 - Acquisition \$2.5 million; and
 - Trust Commission \$900 thousand.

Some of these expenditures included one-time, up-front costs, such as the Trust Commission, mapping, and equipment.

- Held an open solicitation (from November 2013–March 2014) to encourage tribes from the most fractionated locations to express interest in developing cooperative agreements based on tribal priorities.
- Communicated directly with at least 50 tribes (28 with jurisdiction over the most fractionated reservations), including meetings with several on or near their reservations.
- Obtained independent, outside review of the Program’s appraisal methodology by The Appraisal Foundation (TAF).
- Launched a substantive website, 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 and register “interested sellers.”
- Established policies such as flexible purchase ceilings for fractionated reservations to ensure 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.

Tribal leadership and involvement are crucial to the success of the Buy-Back Program. While the Department is willing to run the program without a formal tribal cooperative agreement if a tribe prefers, the Department hopes to enter cooperative agreements with many tribes to implement the Buy-Back Program through a Federal-tribal partnership, which will promote tribal ownership of program, minimize administrative costs, and improve overall effectiveness and efficiency.

Accordingly, we held an open solicitation to request expressions of interest from the tribes having the most fractionated reservations. As a result, nearly 60 tribes have submitted a cooperative agreement application or letter of interest to the Program. The open solicitation facilitates increased tribal input in the timing and sequencing of Program implementation. The Department will rely 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. The Department will implement the Buy-Back Program in a flexible manner and continue to update its approach to reflect lessons-learned, best practices, and tribal involvement.

III. LESSONS LEARNED

The Buy-Back Program is an effort of significant scope and complexity, which has great importance to Indian Country. As we continue to implement the Buy-Back Program, we have incorporated lessons learned, best practices, and tribal feedback to enhance the overall effectiveness of the Program’s implementation strategy. We have heard from tribes on a number of issues, including the cooperative agreement process, scheduling, and reporting on both the expenditure of administrative costs and the acceptance of offers on reservations.

Many features of the Buy-Back Program design have come as a direct result of tribal consultation, such as the need for a minimum base payment to sellers and provision of indirect costs.

Tribes are concerned that the cooperative agreement process is burdensome and overly complex. We have developed instructional materials, hosted a webinar for tribal leaders, and provided one-on-one technical support to tribes. In addition, we revised the cooperative agreement forms, and we will continue to look at ways to improve the process so that everyone's time and attention can focus on making the Program as successful as possible.

The Buy-Back Program also responded to lessons learned regarding scheduling. 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 also recognize that the Department cannot develop an implementation schedule without input from tribes. The Program's open solicitation garnered several cooperative agreement applications and letters of interest. We are currently evaluating the applications and determining which locations can be completed most efficiently.

Indian Country has also called for information on expenditures and the acceptance of offers on reservations. The Department is committed to reporting this information on a regular basis. As described above, the Program has spent approximately \$8 million dollars for implementation. In December 2013, the Program made approximately 3,000 offers to individuals that own interests at the Pine Ridge, Rosebud, and Makah reservations. The offers totaled approximately \$50 million. Approximately 29 percent of the initial offers set out have been accepted, resulting in payments to landowners totaling nearly \$11 million and the consolidation and restoration of over 30,000 acres to tribes. In March 2014, the Program sent additional purchase offers to nearly 16,000 individual landowners in the Pine Ridge Reservation for a total amount that exceeds \$100 million; approximately 10,000 more acres have already been restored to the Oglala Sioux Tribe based on early results of these additional offers. In the near future, the Buy-Back Program will mail additional offers to individuals that own interests at the Rosebud and Makah reservations.

In addition to the areas discussed above, Interior has implemented changes in response to lessons learned at these first few locations. For example, 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. We have updated our deed application to address feedback from landowners, and improved information on our website based on questions from the field. We are constantly seeking ways to incorporate feedback and improve the Buy-Back Program.

Finally, we note that some tribal leaders have voiced concern that the \$1.9 billion Land Consolidation Fund (Fund) is not currently being invested. Unfortunately, the Claims Resolution Act of 2010 does not provide the Department with authority to invest the Fund to generate interest.

IV. 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 to tribes 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.

QUESTIONS SUBMITTED FOR THE RECORD TO LAWRENCE S. ROBERTS, PRINCIPAL
DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Questions Submitted by Chairman Don Young

Question 1. In March the Buy-Back Program made more than \$100 million in offers to owners of fractional interests at the Pine Ridge Reservation and these individuals have 45 days to accept or reject the offers. What is the acceptance rate so far for these offers?

Answer. As of September 29, 2014, the Department has an approximate acceptance rate of 48 percent based on the three sets of offers to landowners with interests at the Pine Ridge Reservation. The Program's acceptance rate on all of the offers that have been sent to landowners with interest is 36 percent.

Question 2. In the hearing, you heard from Chairman Finley that 4 years ago the Administration opposed changing the *Cobell* Settlement Agreement to allow tribes to contract the Buy-Back program under the Indian Self-Determination Act. Is this still the Administration's position?

Answer. The Department strongly supports the spirit of self-determination and self-governance. Although the Cobell Settlement Agreement (Settlement) and the Claims Resolution Act do not allow the use of Indian Self-Determination and Education Assistance Act (ISDEAA) agreements to operate Buy-Back Program activities, the Buy-Back Program gains the benefit of tribal participation by entering into cooperative agreements and more informal arrangements with tribes to undertake land consolidation tasks.

The Department and the Administration are strong supporters of the ISDEAA. However, any proposed changes to the Buy-Back Program must take into account the progress we have made in the Program and the potential delays and additional implementation costs that a new process may cause.

In comparison to other Federal programs, the Land Buy-Back Program's limited, 10-year timeframe and its 15 percent cap on implementation costs (for outreach, land research, valuation, and acquisition activities) are unique. The parameters in the Settlement necessitate relatively intense, short-term activity at each location to maximize the number of the 150 locations and the some 245,000 individual land owners that may participate in the Program. If the ISDEAA were extended to the Buy Back Program, the 10-year deadline established by the Settlement would likely need to be extended to provide the Program, and tribes, the additional time necessary:

- to consult with tribes to determine an appropriate method for allocating implementation costs under ISDEAA agreements;
- to provide training and conduct security clearances for tribal staff at each location that seeks to accept responsibility for the Program's acquisition phase through an ISDEAA agreement;
- for tribes that choose to use a site-specific appraisal approach rather than a mass appraisal approach; and
- for the Buy-Back Program to transition to any amendment to ensure that it has proper staff and intra-agency agreements in place to implement the law. Even if every tribe chose to utilize ISDEAA agreements, the Program would need to maintain staff to provide final approval of appraisals and land transfers.

Moreover, acquisition and payment processing time may vary from tribe to tribe under ISDEAA agreements. Currently, the Department is able to print and mail 2,000 offers per day and pay owners promptly that sell their fractional interests (since December 2013, the Program has paid owners an average total of \$667,000 per day). The process integrates land title and trust fund systems of record, which enables landowners to receive their offer packets shortly after appraisal completion. Payments for accepted offers are deposited directly into their Individual Indian Money accounts typically within an average of 5 business days of receiving a complete, accepted offer package.

In addition, and as indicated above, additional funding could be necessary, should the ISDEAA be extended to the Buy Back Program, for:

- tribal and Interior administrative costs associated with any extension of the current 10 year implementation deadline;
- tribes to prepare proposals and negotiate with Program representatives, including resources to provide technical assistance to tribes for the development of agreements;
- implementation of changes to processes that have already been established;
- appraisal work, which may increase (the Buy-Back Program uses primarily mass appraisal methods whereas most tribes in ISDEAA programs use site-specific appraisals); and
- full contract support costs, which would need to be provided under ISDEAA agreements (the Buy-Back Program currently provides up to 15 percent in indirect costs through cooperative agreements to minimize implementation expenses consistent with the Settlement).

Existing Buy-Back Program costs and functions for tribes not interested in utilizing ISDEAA agreements would remain the same; consequently, the Buy-Back Program would continue to need funds to maintain capacity for the Department to implement the program.

If the ISDEAA was extended to the Buy-Back Program without additional funding, it is likely that the \$285 million administrative cost cap would be reached well before the fund available to purchase land is exhausted. Thus, any increase in costs associated with an ISDEAA extension would need to be authorized and appropriated so that such costs do not diminish the funds available to return lands to tribes.

Question 3. The committee has received testimony that CGI Federal, the same Federal contractor that developed the healthcare.gov Web site, is also involved in the Buy-Back program and may even have an ownership interest in the TAAMS system. What involvement does CGI Federal have with the program?

Answer. CGI Technologies and Solutions, Inc. is a subsidiary of CGI Federal. CGI Federal was the lead contractor on the Web site for the Affordable Care Act. The Bureau of Indian Affairs (BIA) awarded CGI Technologies and Solutions, Inc. the contract for ADP Systems Development Services and Automated Information System Design and Integration Services. The result of that contract is the Trust Asset Accounting Management System (TAAMS). In 2013, BIA requested that a new TAAMS module be developed specifically to manage Land Buy-Back land purchases. BIA also approved a Task Order for CGI to manage the Print/Mail/Scan/Review portion of the acquisition process.

Question 4. The committee is aware that some tribes have expressed a desire for the Buy-Back funds to be able to be invested or otherwise earn value to maximize the number of interests that can be purchased. Does the Department agree with this concept? If so, can it provide the committee with a proposal on how this could be accomplished?

Answer. The Department has no authority to invest the Trust Land Consolidation Fund (Fund). The Cobell Settlement sets forth the precise purpose and use of the Fund. It states, in pertinent part, as follows:

“The Trust Land Consolidation Fund shall be used solely for the purposes of (1) Acquiring fractional interests in trust or restricted lands; (2) Implementing the Land Consolidation Program; and (3) Paying the costs related to the work of the Secretarial Commission on Trust Reform, including costs of consultants to the Commission and audits recommended by the Commission. An amount up to a total of no more than fifteen percent (15 percent) of the Trust Land Consolidation Fund will be used for purposes 2 and 3.” (*Cobell Settlement Agreement* at § F(2).)

Under the terms of the Settlement, any unexpended funds revert to the Department of the Treasury if not expended within 10 years. The Department has no authority to utilize, disperse, retain, or invest any portion of the Fund in a manner inconsistent with the mandates of the Settlement, as ratified by the U.S. Congress through the Claims Resolution Act of 2010.

If legislation were enacted either authorizing investment of or providing for the payment of interest on the Fund, such authority should be granted to either the Department or to the U.S. Treasury. All interest income earned from investment of the Fund should inure to benefit of the Fund.

Question 5. What amendments can be made to the *Cobell Settlement Agreement* or other applicable Federal law to improve the success of the Buy-Back Program for Indian tribes?

Answer. We are pleased with the success of the Program thus far. Thus far, we have successfully concluded transactions worth almost \$146 million, restoring the equivalent of nearly 280,000 acres of land to tribal governments.

From the lessons we have learned thus far there is one area for improvement. The Settlement established the \$1.9 billion Trust Land Consolidation Fund for the purchase of fractional interests. Despite the large size of the Fund, it is unlikely to contain sufficient capital to purchase all fractional interests across Indian country.

In terms of amendments to the *Cobell Settlement Agreement* or other applicable Federal law, Congress may want to consider amendments that would clarify a State's ability to share appraisal information with the Buy Back Program. We have observed this to be a hurdle in some States and clarifying language could address such situations.

Questions Submitted by Ranking Member Colleen Hanabusa

Question 1. The Claims Resolution Act of 2010 states that the Secretary has 10 years from the date of the final settlement to spend the \$1.9 billion of the Trust

Land Consolidation Fund. By my calculation, we are already about 4 years in and the Department has just recently sent purchase offers to three tribes. At this rate, do you expect the 10-year window to be long enough to enable you to spend all of the \$1.9 billion?

Answer. The Department is committed to implementing the Program in the most efficient and cost-effective manner. The Settlement was confirmed by the Claims Resolution Act of 2010 and approved with finality on November 24, 2012, after appeals were exhausted through the U.S. Supreme Court. The 10-year period occurs from November 24, 2012 (the date of Final Approval of the Settlement) to November 24, 2022.

During the first year of the Program, the Department focused on joint planning with tribes, cooperative agreements, staffing, and designing and laying out the strategy, methods, and key systems for this 10-year Program. Tribal involvement, transparency, flexibility, timely decisionmaking, and ongoing communication throughout the life of the Program are critical to its success.

In less than 1 year we have successfully concluded transactions worth almost \$138 million, restoring the equivalent of nearly 277,000 acres of land to tribal governments (these transactions relate to eight different locations). Deputy Secretary of the Interior Michael Connor announced a schedule through 2015 for the continued implementation of the Program that identified locations representing more than half of all the fractional interests and unique owners across Indian Country. The Department is planning to announce additional locations before the end of the calendar year.

One approach that the Department is using to expend the Fund in a timely manner is the use of mass appraisal techniques. The breadth, scale, limited funding, and bounded life span of the Program necessitate the use of mass appraisal methods where appropriate. The Department intends to implement the Program fairly and equitably, moving quickly to reach as much of Indian Country as possible during this 10-year period. Mass appraisal is an efficient way to quickly determine fair market value for a significant number of fractionated tracts. By using the mass appraisal method where applicable, the Program can maximize the number of owners that can receive payments for the interests they decide to sell, and therefore the interests that will be immediately restored to the tribes.

Question 2. When can members of the Trust Administration Class expect their payments? Why have there been delays in issuing them?

Answer. The *Cobell v. Salazar* lawsuit ended in a settlement agreement approved by Congress and by the U.S. District Court for the District of Columbia, where the case was filed.

Under the settlement agreement, the Federal Government paid approximately \$1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a ("No Stage 2 [TAC] 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.").

Plaintiffs hired (and the court approved) the Claims Administrator, Garden City Group (GCG), to make the distribution. In late 2012, the district court approved the first round of settlement payments to the Historical Accounting Class (HAC), also identified as Stage 1 payments. In the Stage 1 payments, each class member was paid \$1,000. On January 23, 2014, the district court granted a motion by Plaintiffs to add almost 13,000 members to the HAC.

Plaintiffs are now preparing to make the Stage 2 settlement payments to members of the TAC. This part of the settlement calculation is more complicated because the dollar amount paid to class members will vary according to how much money was deposited in his or her Individual Indian Money (IIM) account over time.

Trust Administration Class members who had no IIM account, or who had no money deposited to an IIM account, will receive a minimum payment. That minimum amount is based on: (1) the total number of class members; and (2) the amount of money left in the settlement fund after paying the Stage 1 settlement payments (plus the expenses of administering the settlement). Plaintiffs cannot per-

form these calculations for Stage 2 until they can identify the final number of class members and reasonably estimate the amount of money available in the settlement account after expenses.

Pursuant to the Settlement Agreement, a Special Master was appointed to make determinations regarding the eligibility of individuals to participate as members of the TAC. Before the TAC can be finalized, the Special Master must resolve the appeals that “self-identifying” putative TAC members made after they were denied inclusion into the class by GCG. The Special Master is still considering those appeals, and we have no timeframe for when the appeals will be resolved. Once the universe of TAC members has been identified, the calculation of TAC settlement payments can be completed.

Question 3. A private firm, the Garden City Group, is arranging to send out payments to the Trust Administration Class, but ultimately, executing this duty is a Federal responsibility. Who in the Department is responsible for overseeing the work of the Garden City Group and how are they addressing class member concerns that expected payment dates keep getting pushed back?

Answer. Plaintiffs, not the Federal Government, have the responsibility to disburse payments to the members of the Cobell classes pursuant to the Settlement Agreement and the legislation authorizing its implementation. Payments to individual class members are not considered trust unless and until they are transferred to the Department pursuant to the settlement provisions noted below. They are aided in that task by the appointed Claims Administrator, Garden City Group (GCG). The government’s limited involvement includes supplying the “best and most current” contact information for each beneficiary class member and indicating if the class member is a minor, non-compos mentis, an individual under legal disability, in need of assistance, or whose whereabouts is unknown, as well as receiving and holding proceeds for individuals with IIM accounts who are identified in DOI’s data as “whereabouts unknown.” See, e.g., Settlement Agreement at E.1.g (“Defendants’ Limited Role. Except as specifically provided in this Agreement, Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies in the Qualifying Bank or the distribution of such monies.”).

With the settlement funds in a private bank, the settlement distribution is entirely a private task, with the government merely providing data (i.e., contact information, whereabouts unknown information, etc.) to support Plaintiffs’ (and GCG’s) effort. Although the Federal Government is not in charge of the Cobell settlement distributions, the Department of the Interior does have program responsibility for another part of the Cobell settlement: use of the \$1.9 billion Congress appropriated to buy back highly sub-divided allotments on a voluntary basis from individual land owners. In contrast to the monetary payments to class members, this “Land Buy Back” portion is the responsibility of the Department of the Interior.

The Department of the Interior is not charged (by the Settlement Agreement or otherwise) with overseeing the work of the Claims Administrator GCG. With that in mind, individuals within the Department (specifically, officials within the Office of the Special Trustee and Office of the Solicitor) are working collaboratively with GCG for the delivery of the contact information and to help resolve any questions or concerns that may arise about the data. Supervision and oversight of the Claims Administrator, however, remains with the district court.

Question 4. Does the Department have enough personnel to ensure the timely implementation of the Land Buy-Back Program?

Answer. The Program currently employs 56 full-time employees (Program Office 10, Bureau of Indian Affairs 14, Office of Minerals Evaluation 13, and Office of Appraisal Services 19). In addition, tribes may hire approximately up to 29 tribal staff through funding available under cooperative agreements. The Program is also utilizing contractors, particularly for acquisition (print/mail/scan) and appraisal services.

Tribes will also continue to have an active role in implementing the Program, particularly with respect to outreach activities. It is critical that the Buy-Back Program and tribal leaders work together to ensure that landowners are made aware of the opportunity to sell their interests for the benefit of both the landowner and tribal communities. The Department hopes to enter into cooperative agreements with as many interested tribes as possible to take advantage of tribes’ ability to minimize administrative costs and to improve the overall effectiveness and efficiency of the Buy-Back Program. The Department currently has formal or informal agreements in place with 12 tribes: 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, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboiné and Sioux Tribes, 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 of North and South Dakota, and the Crow Tribe.

Question 5. I have heard that the Department is focusing on only 40 tribes to conduct the Land Buy-Back Program even though there are 150 tribes with fractionated land shares. Are those claims accurate? If so, why are you focusing on only 40 tribes?

Answer. It is not accurate that we are only focusing on the top 40 tribes. It is true that approximately 90 percent of the purchasable fractional interests are located within 40 of the 150 locations with purchasable fractional interests. As a result, as a practical matter, the Department must focus a great deal of its *initial* efforts among these highly fractionated locations. While the Program will be implemented at locations that hold the highest amount of purchasable fractional interests, the Department will also pursue implementation activities with tribes at locations that represent the approximately 110 locations with the remaining 10 percent of the fractionated land. Efforts are already underway at several less fractionated locations including the Makah, Coeur d'Alene, Squaxin Island, Swinomish, Prairie Band, Quapaw, and Lummi Reservations.

Question 6. Many tribes already implement their own fractionated shares buyback programs with their own funds. These tribes are eligible for the Cobell Settlement's Land Buy-Back program, but they have had to wait in a long line to access settlement funds. Meanwhile, they have been continuing to implement their own programs with their own funds. Is the Department open to using the Trust Land Consolidation Fund for reimbursing tribes for fractionated land purchases from November 2012, the time the Cobell Settlement was officially final, to the time Interior is able to make them an offer?

Answer. The Department is open to exploring every possible avenue to efficient, timely, and cost effective purchases of fractionated interests consistent with the requirements of the Settlement, the Indian Land Consolidation Act, the Claims Resolution Act of 2010, and all other applicable laws.

We have also made tribes not immediately slated for implementation in the next year aware of the opportunities and tasks that they can undergo right now to help prepare for the smooth transition when the Program moves to their location.

Question 7. Some tribes have expressed concerns with the Department's one-size-fits-all approach to implementing the Land Buy-Back Program. How do you respond to that criticism and can you understand the need for the Department to take a more tailored approach?

Answer. The Department recognizes the uniqueness of each location and tribal government, will continue to consult with tribes individually, and will continue to evaluate tribal proposals individually before initiating Buy-Back Program activities on the respective reservations. The Program's Tribal Relations Advisors are responsible for working closely with each tribe to understand its concerns and unique goals. Each cooperative agreement between the Program and individual tribes is unique in time, scope, and responsibilities based on the expressed interests of the tribe.

Cooperative agreements present an opportunity for tribes and the Program to move forward together by providing funding for tribes to perform certain tasks, such as outreach to the landowners. While much can be accomplished through these agreements, cooperative agreement funding should be viewed as a short-term resource to achieve the much larger and more valuable goal of land consolidation. Accordingly, the Program must award agreements with an eye toward efficiency without engaging in protracted cooperative agreement negotiations that detract from the objective of providing individual landowners with offers of fair market value for their fractionated interests in trust or restricted land.

A Scope of Work Checklist has been developed in response to tribal feedback requesting details about the work involved and templates to streamline the process for entering into agreements. While this checklist outlines baseline parameters and tasks, it does not preclude tribes from proposing other pertinent tasks or activities given the unique circumstances of their locations.

The Program has worked diligently to facilitate and expand tribal involvement in land consolidation efforts, in part by hiring staff dedicated to those goals. It also strives for a cooperative agreement process that is as streamlined as possible, while

still meeting all Federal and Departmental regulations and requirements associated with the awarding of any financial assistance. These requirements, such as completing the mandatory SF-424 Application for Federal Financial Assistance forms and complying with the applicable procurement regulations and cost principles, apply to all financial assistance awards, including grants, unless statutorily exempted.

Question 8. Chairman Berrey claims that the Department refused to work with his tribe to purchase fractionated shares in a Superfund site. Is this true? If so, why is this? Shouldn't the tribe be able to use Settlement funds to consolidate shares on any of its lands it sees fit?

Answer. The Department recently announced a list of locations where it would implement the program and the Quapaw Tribe is included on that list. The Department has in fact already sent offers to Quapaw that are outside the Superfund site and is working to finalize those purchases. Although fractionated shares within the Superfund site present complex legal and practical challenges, the Department is working with the Department of Justice on whether and how the Department can purchase such parcels. The Department continues to keep the tribe apprised of its efforts.

Question 9. Our tribal witnesses today universally support Indian Self-Determination Act contracting over other cooperative agreements. If Congress worked on a bill to permit tribes to enter into ISDEAA contracts to administer the Buy-Back Program, would the Department support it?

Answer. Please see page 1, answer 2 in response to the Chairman's similar question.

Questions Submitted by Rep. Raúl Grijalva

Question 1. I understand there are five tribes that have successfully entered into Cooperative Agreements with the Department already, can you share with us how has the Department concluded the Agreements with those five tribes?

Answer. The Department has entered into agreements with 10 tribes (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, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboiné and Sioux Tribes, 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 of North and South Dakota, and Crow Tribe). The Department also has a Memorandum of Agreement with Gila River Indian Community of the Gila River Indian Reservation, and an informal working agreement with Makah Indian Tribe of the Makah Indian Reservation. The Department expects to finalize additional agreements in the near future.

In order to negotiate an agreement, the Program's Tribal Relations Advisors, in coordination with field staff, work closely with tribal leadership to define a scope of work that will enable the tribe to accomplish its goals for the Program. The time it can take to reach each agreement is dependent on each tribe's procedures, which can vary dramatically in terms of needed approvals. The tribal point of contact and the Tribal Relations Advisors are in regular contact via email and in-person meetings throughout the process.

Question 2. Let me turn your attention away from the land Buy-Back Program and to the initial aim of the Cobell Settlement, can you give me the latest update and progress on the Historical Trust Administration established to compensate Individual Indian Money (IIM) Account Holders?

Answer. The *Cobell v. Salazar* lawsuit ended in a settlement agreement approved by Congress and by the U.S. District Court for the District of Columbia, where the case was filed. Under the settlement agreement, the Federal Government paid approximately \$1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a ("No Stage

2 [TAC] 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.”).

Plaintiffs hired (and the court approved) the Claims Administrator, Garden City Group (GCG), to make the distribution. In late 2012, the district court approved the first round of settlement payments to the Historical Accounting Class (HAC), also identified as Stage 1 payments. In the Stage 1 payments, each class member was paid \$1,000. On January 23, 2014, the district court granted a motion by Plaintiffs to add almost 13,000 members to the HAC.

Plaintiffs are now preparing to make the Stage 2 settlement payments to members of the TAC. This part of the settlement calculation is more complicated because the dollar amount paid to class members will vary according to how much money was deposited in his or her Individual Indian Money (IIM) account over time.

Trust Administration Class members who had no IIM account, or who had no money deposited to an IIM account, will receive a minimum payment. That minimum amount is based on: (1) the total number of class members; and (2) the amount of money left in the settlement fund after paying the Stage 1 settlement payments (plus the expenses of administering the settlement). Plaintiffs cannot perform these calculations for Stage 2 until they can identify the final number of class members and reasonably estimate the amount of money available in the settlement account after expenses.

Pursuant to the Settlement Agreement, a Special Master was appointed to make determinations regarding the eligibility of individuals to participate as members of the TAC. Before the TAC can be finalized, the Special Master must resolve the appeals that “self-identifying” putative TAC members made after they were denied inclusion into the class by GCG. The Special Master is still considering those appeals, and we have no timeframe for when the appeals will be resolved. Once the universe of TAC members has been identified, the calculation of TAC settlement payments can be completed.

Question 3. I am also interested in the investment on the education of Indian Youth side of the Cobell Settlement. I believe that \$60 million of \$1.9 billion dollars Trust Land Consolidation was contributed to Indian Education Scholarship (aiming at improving access to higher education for Indian youth), can you give us an update and progress of this Scholarship Program? And how many Indian youth have benefited from this fund already?

Answer. In accordance with the terms of the Settlement the Department of the Interior will contribute up to \$60 million to the Scholarship Fund. Contributions to the Scholarship Fund are based upon the formula outlined in the Settlement setting aside a certain amount of funding based on the value of the fractionated interest sold. As the offer sets for the individual reservations receiving offers are completed, scholarship funds are transferred to the Indian Education Scholarship Holding Fund (Holding Fund). At the end of each quarter, the funds are transferred from the Holding Fund to the American Indian College Fund. The first payment was made at the end of March 2014 and the second at the end of June 2014. To date, the Department has transferred more than \$3.4 million to the American Indian College Fund. Another transfer of approximately \$1 million will occur in the near future.

The American Indian College Fund, headquartered in Denver, Colorado, administers the Scholarship Fund and provides students with the resources to succeed in tribal colleges and technical and vocational certifications as well as traditional undergraduate and graduate programs. A five-member Board of Trustees is responsible for the oversight and supervision of the College Fund’s administration of the Scholarship Fund and for developing and adopting a charter outlining its role and responsibilities. The American Indian College Fund is responsible for establishing the eligibility criteria for the award of scholarships as well as for managing and administering the Scholarship Fund. Twenty percent of the Fund’s portfolio will be directed to support graduate students through the American Indian Graduate Center in Albuquerque, New Mexico. Benefits to Indian students as a result of these scholarships are anticipated in the near future.

Mr. YOUNG. Thank you, Mr. Roberts. A pleasure.
Mr. Finley.

**STATEMENT OF MICHAEL O. FINLEY, CHAIRMAN,
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

Mr. FINLEY. Thank you. Good afternoon, Chairman Young. I hope that you can extend appreciation to Chairman Hastings for the wonderful introduction that he bestowed upon me this afternoon.

My name is Michael Finley. I serve as Chairman of the Confederated Tribes of the Colville Reservation in Northeast Washington State. I also serve as first Vice President to the National Congress of American Indians, and Chairman to the Intertribal Monitoring Association of Indian Trust Funds. I will be testifying today as Chairman of the Colville Tribes.

We are located, as I stated, in Northeast Washington State. We encompass about 1.4 million acres, bigger than the State of Delaware. The fractionation issues are large on Colville, and we are on the list to be treated here with the Buy-Back Program, hopefully shortly.

I want to go back to 4 years ago, Mr. Chairman, if I may, and deviate a little bit from my testimony. Beginning 4 years ago, I worked closely with Chairman Hastings and other members of the party to try to rectify some of the problems that we have seen in the Cobell Settlement as it was making its way through Congress. And I think, Mr. Young, you were part of those discussions at certain points.

There was a greater concern by tribal leaders about certain things that we have seen, based on our own experiences, that we thought meaningful and easy changes could be made to that settlement as it was making its way through. And, much to our surprise, I think the level of negativity, and the level of reluctance, not only by the plaintiffs, but by the administration, I found it quite appalling, to be quite honest. There were simple changes that we were asking for. And by merely us asking questions, it seemed like we were being ridiculed for just wanting to ask questions about the Cobell Settlement.

I think many at the time just wanted to rush through it, they didn't want us to ask questions. I think one of the hearings that was had here in this very room where I testified, I think there was pushback on that, for us to even have a hearing. And all that the tribal leaders wanted was to be heard at the time, because we had our own constituents who were directly impacted by this who wanted to know how it was going to affect them, and what it meant. And, to be quite honest, I didn't have all the answers, as a tribal leader, as their elected official. So when I went to ask questions and to articulate some of the concerns that were coming directly from my membership, it was met with some negative feedback.

And, you know, I have to share. You know, for a time after that, I was cut off the White House mailing list, you know, for mass emails. And I had to actually go to our lobbyist to get them for a period of time. And at some point down the road I was added again. That may or may not be directly correlated, but I know, serving as Chairman to the ITMA board for a number of years, we were asking questions.

We didn't want to kill the settlement, we were merely asking whether or not changes could be made. They had received funding

for 10 years, straight up until that time. And when we started asking those hard questions, all of a sudden that funding went away. And that was funding that came from the Federal Government. Again, it may or may not be correlated to us asking questions, but judging the animosity that we were feeling at the time, I venture to say that they are, or they were. So, I just wanted to share that, as some of the experiences that I received after asking questions on why changes should be made to it before it had been approved through Congress.

One of the major ones that I think we were able to get through Doc Hastings and even on the Senate side was to merely allow tribes to contract through 638, similar to a lot of the things that we do today. You know, it is enacted legislation that allows tribes to do a number of things, through contract in 638, but that was denied. Instead, now we are stuck with this cooperative agreement model that doesn't altogether work to our benefit.

We want to have complete control over it. We want to allow the money, the \$1.9 billion, to earn interest. Today, right now, the \$1.9 billion is not earning interest. If it was done through 638 contracting, the tribes who receive their allocation, they could invest that money. But there is no interest being earned right now. And I don't know if it occurred to the people who drafted up the legislation then, or the people pushing it, whether it be on the plaintiff side or what have you, but it seems to me that is one thing that they would have wanted to include, and I am sure they have a good reason why.

Another concern that my tribal members continue to have today, Mr. Chairman, is where is the second payment. They were promised it at the end of last year. Many of them were counting on it for Christmas, and it didn't come through. I know, as an elected official, if I promise my members they are going to get a payment before Christmas, that didn't come through, I wouldn't be sitting here in front of you today. I can tell you that. So, I think some answers need to be given to the tribes and their individual allottees on that point there.

I know there are delays, and I am familiar with why there are delays. Some say it is because the attorneys fees haven't been finalized yet. But some say that is not exactly the truth. But I think if this committee had any interest, they might want to look into that to find out the reasons why.

So the interest itself, if we can get some remedy to that, Mr. Chairman, I think that would go a long way to allow tribes to extend that dollar a lot further than what it is going to go today, because the \$25.6 that is going to be allocated to Colville to deal with the fractionation issue is just a drop in the bucket to the complete problem that we have there.

And we, as a tribe, historically have been very aggressive with our own buy-back purchase program, and we have done it quite successfully. We are second to only one tribe in the Pacific Northwest in total trust lands. And that is second to the Warm Springs in Oregon.

The other part that I alluded to a little bit ago is we want to have complete control over the Buy-Back Program. We want to be a part of the outreach, the land research, the evaluation, the acqui-

sition parts of it. And especially the acquisition, because we are dealing with our tribal members. We know our tribal members better than anybody.

Mr. YOUNG. Michael, you are about out of time.

Mr. FINLEY. OK. I will wrap it up there.

With that, I just want to thank you. And I appreciate the opportunity to be here today. This is something I am very passionate about, and I have a lot more I want to share, but a lot of it is in my written testimony. So I appreciate the opportunity, Mr. Chairman, thank you.

[The prepared statement of Mr. Finley follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL O. FINLEY, CHAIRMAN,
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Good afternoon Chairman Young, Ranking Member Hanabusa, and members of the subcommittee. My name is Michael Finley and I am the Chairman of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "CCT"). I also serve as the First Vice President of the National Congress of American Indians and the President of the Intertribal Monitoring Association on Indian Trust. I appreciate the opportunity to testify today in my capacity as Chairman of the Colville Tribes on the implementation of the *Cobell* settlement and the Department of the Interior's Land Buy-Back program.

My testimony will focus on how the *Cobell* settlement came to be approved and how many of the issues that tribes have raised about the Buy-Back program could have been resolved had the changes that tribal leaders requested been incorporated into the settlement 4 years ago. I also have three specific recommendations for the Department and the subcommittee to consider to improve the Buy-Back program.

First, I would like to provide some background on my people and our land. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 aboriginal tribes and bands from all across the plateau region of the Northwest and extending into Canada. The present-day Colville Reservation encompasses approximately 1.4 million acres and is located in north-central Washington State. The Colville Tribes has nearly 9,500 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the CCT's members live on or near the Colville Reservation, which has more than 800,000 acres of forest land.

INDIAN TRIBES AND ORGANIZATIONS WANTED THE COBELL SETTLEMENT CHANGED

When the *Cobell* settlement was still being considered by Congress 4 years ago, Indian tribes and tribal organizations requested certain changes to the settlement. These included changes to the land consolidation portion of the settlement and the Buy-Back program. The Indian Land Consolidation Act allows tribes a role in administering the Buy-Back program but it explicitly prohibits Indian tribes from contracting or compacting the program under the authorities in the Indian Self-Determination and Education Assistance Act ("ISDEAA").

In an April 27, 2010, letter to tribal leaders, Senate Committee on Indian Affairs Ranking Member John Barrasso sought input on five changes to the *Cobell* settlement. The changes included capping pre-settlement date attorneys' fees, expenses, and costs at \$50 million; limiting any "incentive awards" under the settlement to named plaintiffs to actual, unreimbursed out-of-pocket expenses incurred by that plaintiff; having the court appoint a Special Master to select the bank for holding the settlement funds; and setting aside \$50 million from the \$1.412 billion settlement monies as a reserve fund to address specific instances where the Special Master determined the formula payment is insufficient or unfair. The final change Senator Barrasso proposed in his letter would have required the Department to consult with Indian tribes in planning, designing, and setting the priorities for the land consolidation portion of the settlement and to allow Indian tribes to implement the Buy-Back program under the ISDEAA.

The Administration and the *Cobell* class representatives vigorously objected to the changes. It seemed that they both wanted to create the perception that asking questions about the settlement—let alone suggesting changes—meant you were in favor of "killing" the settlement. To the contrary, the tribal leaders and organizations that supported changing the settlement did so out of a desire to ensure fairness and ade-

quate protections for their constituents, Indian beneficiaries generally, and tribal governments.

The Affiliated Tribes of Northwest Indians (“ATNI”), the Great Plains Tribal Chairman’s Association, and the National Congress of American Indians all passed resolutions or otherwise expressed support for the proposition that changes to the *Cobell* settlement must be made. All three of these entities referenced contracting or compacting the Buy-Back program under the ISDEAA in the changes they endorsed. Based on this tribal support, then-Ranking Member Doc Hastings proposed an amendment that would have incorporated the changes adopted in the ATNI resolution and Senator Barrasso’s April 27 letter. The House majority at the time did not allow that amendment to be considered on the House Floor.

Congress ultimately approved the settlement as part of the Claims Resolution Act of 2010 and the foregoing is now a historical footnote. As enacted into law, \$1.9 billion was appropriated for the Buy-Back program. It is ironic, however, that many of the issues and concerns that tribes have expressed about the Buy-Back program over the past year could have been addressed had the parties to the settlement incorporated the changes that tribes requested.

For example, nearly every tribe is concerned about the prospect of unspent funds appropriated for the Buy-Back program reverting back to the U.S. Treasury after 10 years. Many tribes are similarly concerned about the level of involvement they will be allowed to have in implementing the program. These would not be issues today had the *Cobell* settlement been amended 4 years ago to allow tribes to contract or compact the program under the ISDEAA.

THE COLVILLE TRIBES’ IMPLEMENTATION OF THE BUY-BACK PROGRAM

In the Buy-Back program’s updated implementation plan, the CCT is listed as number 15 out of the 40 tribes identified for initial deployment of the program. The plan states that the CCT will have approximately \$25.6 million available to purchase fractionated interests. For decades, the CCT has carried out its own land consolidation program using tribal funds and fully expects to spend all of this money. In 2013 alone, the CCT purchased \$6.5 million of fractionated interests from tribal members using proceeds from its \$193 million trust mismanagement settlement with the United States. Demand on the part of tribal members to sell their land to the CCT has always been high and we expect this to continue to be the case going forward.

The CCT is currently verifying the accuracy of the trust land ownership records on the Colville Reservation. On most reservations, these records are not accurate. The CCT wants to ensure that any offers to purchase Colville tribal members’ fractionated interests will accurately reflect the members’ landholdings. The CCT is also attempting to obtain certain information so that it can ascertain which tracts of land it will prioritize for purchase. The CCT has expressed its intent to the Department to enter into a cooperative agreement to administer as much of the Buy-Back program as possible.

RECOMMENDATIONS

Based on the work we have done so far, we offer the following recommendations to improve the Buy-Back program:

(1) Allow Tribes to Invest their Allocated Buy-Back Funds

For the 10-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. For whatever reason, it did not occur to the architects of the settlement that the Department should be able to invest the \$1.9 billion and retain the earnings for the program. 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. Again, had the ISDEAA change been incorporated, this would not be an issue.

It only makes sense to maximize the amount of funds available to purchase fractionated interests by allowing this large appropriation to earn value over time to increase the number of interests that can be purchased. The 10-year clock has already begun ticking for the \$1.9 billion principal to be spent. Every fiscal year that goes by without this money being invested represents money and opportunity lost.

It would require congressional action for the Department to be able to invest the Buy-Back appropriation and retain the earnings. Tribes, however, can invest their allocated purchase ceiling funds if the funds could be transferred directly to them and not held by the Department. The details of such an arrangement could be

included in an escrow agreement or as part of a cooperative agreement. The CCT intends to propose this as part of its cooperative agreement as a means of maximizing the funds available to consolidate its land base.

(2) Make Land Data More Readily Available at No-Cost to Tribes

The BIA's system for recording title to Indian trust lands is called the Trust Asset and Accounting Management System, or "TAAMS," as it is commonly referred. The TAAMS system was developed by CGI Federal, the same contractor that developed the healthcare.gov website that received widespread media attention last fall.

The CCT understands that through some arrangement, CGI Federal retains an ownership interest in the TAAMS system. While a small number of tribes like the CCT have access to the TAAMS system, the system is not designed to make extrapolation of data user friendly. CGI Federal has been separately marketing itself to Indian tribes as an entity that can obtain data from the TAAMS system. The CCT will likely have to pay CGI Federal more than \$20,000 to obtain the information and data that it needs to implement the Buy-Back program.

This is an absurd result and should never have been allowed to happen in the first instance. We encourage the subcommittee to explore how the arrangement between the Department and CGI Federal began and what, if anything, can be done right now to ensure that tribes do not have to pay CGI Federal or other third parties for data that should be readily available.

(3) Allow Tribes to Perform All Land Acquisition Functions

The Buy-Back program is divided into four phases: outreach, land research, valuation, and acquisition. It is imperative that those tribes with the capacity be allowed to perform all phases, but especially the acquisition phase. Tribes are in the best position to consummate land sales and issue deeds to close out the transactions. Tribal control over the acquisition phase will also allow tribes to exchange tribal trust land for fractionated interests. If individuals are reluctant to sell because they want to maintain an ownership interest in Indian land, this type of an exchange would allow for those individuals' interests to be consolidated while giving them an interest in tribal land in return. The key to these activities is tribal control over the acquisition function.

I appreciate the subcommittee's consideration of this testimony. We look forward to working with the subcommittee and the Department on these and other issues. At this time I would be happy to answer any questions the members of the subcommittee may have.

QUESTIONS SUBMITTED FOR THE RECORD TO MICHAEL O. FINLEY, CHAIRMAN,
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Question Submitted by Chairman Don Young

Question 1. In your statement you mentioned that there were consequences for those who advocated for changes to the *Cobell* Settlement Agreement. When the Settlement Agreement was still pending 4 years ago, what were tribal leaders saying about efforts to change it?

Answer. Many tribal leaders were privately supportive of efforts to change the settlement but for various reasons were not in a position to make their views publicly known. At the time, the Administration was coordinating a number of meetings on other initiatives of interest to Indian country. Some tribal leaders expressed concern that publicly advocating for changes to the *Cobell* settlement might lead to them not being invited to participate in these unrelated initiatives.

Question Submitted by Ranking Member Colleen Hanabusa

Question 1. You say that you would like to administer the Buy-Back Program through self-determination contracts. What is the difference between self-determination contracts and cooperative agreements through which you may now administer the Buy-Back Program and why would you prefer one over the other?

Answer. Self-determination contracts explicitly allow funds for contracted programs to be transferred to tribes at the tribes' request. This essentially means that tribes have custody and control of the funds and could incorporate the funds into the tribes' own investment plans or otherwise earn value over time with the money.

As ratified by Congress, the *Cobell* settlement did not contain any authority for the Department of the Interior to invest the appropriation for the Buy-Back program or to retain the proceeds of such an investment. Currently, this \$1.9 billion

appropriation is in a non-interest bearing account and will be for the life of the program. We prefer the self-determination contract model because it would allow tribes to maximize the number of interests by investing their allocated Buy-Back program funds.

Question Submitted by Rep. Raúl Grijalva

Question 1. In your statement you propose a few recommendations for the Buy-Back program and one of them is to allow tribes to perform all land acquisition functions. I am interested to know how could we be assured that this one-sided process would be done in [a] transparent manner? And I am also curious to know too, how do you define “tribes with the capacity” to be allowed to perform land acquisition since every tribe is so different?

Answer. The Colville Tribes is interested in having control of the acquisition function because we want to be able to generate, or re-generate, as the case may be, offer packets to landowners when we conduct outreach meetings to prospective sellers. Often, when our tribal members receive official government correspondence in the mail they set it aside until someone more knowledgeable can explain what the letter is and how it may affect them. We anticipate significant interest in our outreach presentations and want to be able to give landowners the appropriate paperwork onsite if they lost or misplaced their original offer packet.

Ensuring transparency in the acquisition process would, for practical purposes, be self-executing since our control of the function would result in the dissemination of more information in a more convenient manner.

Carrying out the acquisition function involves having access to the TAAMS system and knowledge of BIA realty operations. One measure of tribal capacity to carry out this function could be whether the tribe has contracted either BIA realty functions or Land Title Records Offices. Both of these functions require the tribe in question to have significant capacity.

Mr. YOUNG. I hope you take the time to talk to Doc Hastings and myself. Because I was unaware, and shows how ignorant I can be, which is quite evident, I didn't know that fund was in a non-interest bearing account, and that was done by the administration. I don't understand that. This is a settlement. You ought to be making money off of it. So we may take care of that.

Mr. John Berrey.

**STATEMENT OF JOHN BERREY, CHAIRMAN, QUAPAW TRIBE
OF OKLAHOMA**

Mr. BERREY. Thank you very much for inviting me here today, Mr. Chairman. I would like to thank Congressman Daines and Congressman Grijalva for participating, and also Markwayne Mullin, who is my congressman. I think he will be here shortly.

I echo a lot of the same concerns as my friend, Mike Finley. The Quapaw Tribe of Oklahoma, which I am the chairman, has been involved in tribal land purchases for nearly 10 years. I am in my 14th year as chairman of the tribe. We are a 638 tribe, which we compact or contract all the functions of the Department of the Interior, except for the IIM account management.

Several of my tribal members opted out of the Cobell litigation, because they didn't believe it was the proper case for their claims of years and years of heavy mining done on our land that has left some of the land in bad condition.

But the reason I am here today is I really, we believe in the spirit of this settlement and this Buy-Back Program. We believe in the tribe's ability to make economies out of land use when they become the single owner and single decisionmaker that allows us to make money. And that is the business that I am in. I am into making

our land useful and our opportunities, so I can provide services to my tribal members. That is what I do every day. And we buy land every day.

But our frustration is we don't seem to be able to get through the door of being part of this Buy-Back Program. We were the first tribe to provide a cooperative agreement to the Department of the Interior, and we still today don't have any kind of agreement or way forward to be part of this program. I have a number of tribal members that are ready, willing, and able to sell their land. They want to sell it. I have given them offers. I have the appraisals, I have the surveys. I have all the work done. We are not even asking for the administrative costs. We are just asking for the money to pay for the land within the spirit of the settlement.

We have a very sophisticated realty department. We know all of our members. We know where all the land is. And I am in constant communication with all my tribal members. And they ask me every day when are they going to get to sell their land, because they need the money. It is like the members at Colville. You know, not all my tribal members have a lot of cash, and they see this as an opportunity to better their families, and maybe even buy some food or electricity.

So, it just dumbfounds us that we are prepared, we provided the names, I mean we provided everything to the Department, but yet, to this day, we are not part of the program. We think it is a great program, it is going to allow for economies for the tribe, which will benefit my tribal members. It is going to reduce the burden of the management of the Department of the Interior on all these fractionated interests, which, hopefully, will allow the Department of the Interior to have more resources to do the things that they are there to do, and they can work with us further and have the opportunity with less fractional problems. And we just see this as a win-win for everyone.

Our fear is we are 4 years into this thing. We are knocking on the door every day, saying, "We want to be part of this." We have done all the legwork, we have done the outreach. We have the willing sellers, but they are not interested in working with the Quapaw Tribe, and we don't know why.

We have, in our part of Oklahoma, we have the most land base, the most fractionated tracks, and we are on the list, even though we may be low down on the list, we are still on that list. And we are very frustrated. And we think we can help the Department with some success. If they would just come to the table and meet with me, we could start selling property and purchasing property today, and we could move them closer to an era of less fractional problems of the Quapaw.

So, with that, I would just leave myself. We are trying to become the largest bison herd in Northeast Oklahoma. We are about to spend nearly a million dollars on registered Black Angus cattle, so we could be the largest beef producer in Northeast Oklahoma. But we need more land. And the way that we want to partially get there is through this Buy-Back Program, and we would really like to be part of it, so we could build economies, and I could provide better benefits for my tribe.

So, if you have any questions for me at any time, I will be happy to answer them, and I appreciate the opportunity, sir.
[The prepared statement of Mr. Berrey follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN BERREY, CHAIRMAN, QUAPAW
TRIBE OF OKLAHOMA (O-GAH-PAH)

INTRODUCTION

Good afternoon Chairman Young, Ranking Member Hanabusa, my own Congressman Markwayne Mullin, and honorable members of the subcommittee on Indian and Alaska Native Affairs.

My name is John Berrey and I am the Chairman of the Quapaw Tribe of Oklahoma (O-Gah-Pah, hereafter Tribe), located in far northeast Oklahoma.

I very much appreciate the invitation to appear before you today to discuss the Land Buy-Back Program for Tribal Nations (the Buy-Back Program), the \$1.9 billion initiative to help re-consolidate fractionated Indian lands across the country.

As you know, this initiative was included in the *Cobell v. Salazar* settlement in ratified by Congress in 2010.

I want to thank you for holding this hearing: it is timely and aptly named because I believe there are real opportunities being missed and, as we all know, this program is probably our last, best shot to re-consolidate Indian lands and make them economically viable again.

MAJOR OBJECTIVES OF THE BUY-BACK PROGRAM

The major objectives of the Buy-Back Program are to:

1. Allow interested tribal members to receive payments for voluntarily selling their land at fair market value;
2. Reduce the number of fractionated interests in trust or restricted lands;
3. Structure acquisitions to maximize the number of tracts in which tribes gain a controlling ownership interest to unlock land for beneficial use or conservation, as determined by the applicable tribe; and
4. Deploy tribal resources such as realty and land management staff and officials to minimize the burdens to the Department of the Interior (the Department).

RE-CONSOLIDATING ITS LAND BASE A TOP PRIORITY OF THE QUAPAW TRIBE

An issue of major importance to the tribe and its members is the consolidation in the tribe of the many fractionated interests of our Indian lands. Over the past decade, the tribe has developed and implemented one of the most sophisticated and successful Indian land consolidation programs in the country.

Since the Buy-Back Program was enacted, the tribe has been working with department officials in its pursuit of a formal relationship from which to use Buy-Back Program funds to reduce fractionation and restore the tribe's land base. We are somewhat frustrated, because, despite the success we have in the area of Indian land consolidation, to date we have not been allowed to participate in the program.

In early 2013, the tribe submitted to the Department a proposed Cooperative Agreement outlining how the tribe's participation in the Buy-Back Program would benefit our tribal members and also demonstrate that significant land consolidation can occur if carried out properly. Various officials at the Department were appreciative for the tribe's submissions, and even commented that they had aided the Department in preparing additional templates for the program.

After several meetings and conversations with Department staff regarding the evolving contours and requirements of this historic land consolidation program, in March 2013, the tribe submitted a revised Cooperative Agreement reflecting our understanding of what factors and elements the Department would view favorably, leading hopefully to our involvement in the Buy-Back Program.

The Department's response was not favorable. A Buy-Back Program official acknowledged the tribe's strong desire to participate in the Program, but went on to note that

"if the tribe is still interested in pursuing a cooperative agreement, I encourage the tribe to submit a cooperative agreement application focusing on non-Superfund fractionated tracts and in light of the cooperative agreement guidelines published since March 2013."

The Department's position is not only disappointing; it shows a fundamental misunderstanding of the Tar Creek site and the fact that large tracts of fractionated

land within that site are not contaminated and are, in fact, being used for agricultural and other purposes. It has also caused us to question the overall openness and fairness of the program, as it is currently being structured.

PAST EFFORTS AND TRIBAL ACQUISITION OF INDIVIDUAL PARCELS

The only rationale the tribe has been provided for being excluded from the Buy Back Program is that the Department does not want it to buy fractionated land within the Tar Creek Superfund site (the Superfund site).

We do not know the basis for this position and, in fact, have tried without success to get the Department to fully articulate its position. But it does not appear to be the true reason.

As explained below, the fact is the Department routinely approves gift conveyances from restricted owner to restricted owner within the Superfund site, and the Department also regularly approves probate conveyances to the tribe from the estates of tribal members relative to restricted and trust parcels within the Superfund site.

For many years, the tribe has sought to use the Indian Land Consolidation Act to acquire title to fractional interests in Indian land both within and outside the boundaries of the Superfund site. The tribe has been successful in acquiring various parcels outside this site, but there currently are dozens of applications by tribal members who have already expressed their keen interest in selling their parcels at the site to the tribe.

In its proposed Cooperative Agreement, the tribe has offered to deploy its realty and other land-related offices and staff, made an extremely cost-effective proposal to use Buy-Back Program funds to consolidate fractional interests, and has offered to acquire these interests *without* asking for administrative funding authorized by Congress in 2010.

There is no provision in law, or for that matter in the Department's updated implementation program, that would prevent these transactions from being consummated.

The tribe obtains conveyances of fractional interests in Indian land within the site through the probating of the estates of tribal members. As you know, the probate process is slow and does not keep pace with land fractionation. Further, and despite suggestions from the Department that the tribe look to non-Superfund site parcels in order to participate in the Buy-Back Program, the reality is that tribal members regularly obtain fractional interests in trust and restricted land within the Superfund site. This belies the Department's position that these in-site parcels cannot be consolidated in the tribe.

Last, the tribe has met repeatedly with Bureau of Indian Affairs officials and expressed the tribe's willingness to explore the possibility of mutually acceptable language or other approaches to ensure the Federal Government incurs no new liability by virtue of these conveyances for purposes of land consolidation. These efforts have also failed.

I am not here to indict anyone, and I really have no information other than what I have mentioned about why the Department seems disinterested in working with the Quapaw Tribe through a cooperative agreement. I do want to point out that realty matters can be very difficult for an Indian tribe to administer if the tribe has not had extensive experience in the area.

Tribes such as the Quapaw Tribe, with highly successful land consolidation programs, can serve as models to other tribes. The Department should not let inclusion in the Buy-Back Program be guided by illegitimate reasons. The program should be open, and tribes, particularly those with a demonstrated record of accomplishments in the land consolidation area, should be allowed to participate.

In summary, in our experience, the Department seems to have a private agenda concerning what tribes will be permitted to participate in the Buy-Back Program. In our case, the Department is, for whatever reason, showing a lack of interest in working with a tribe that has been extremely successful in this area, and that could serve as a model for efficiently consolidating fractional interests in Indian land.

RECOMMENDATIONS TO ENSURE THE BUY-BACK PROGRAM SUCCEEDS

As of January 2014, the Department has agreed to Cooperative Agreements with five (5) Indian tribes: the Confederated Salish and Kootenai Tribes, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Makah Indian Reservation, and the Rosebud Sioux Reservation.

I am happy for these tribes and am hopeful the Buy-Back Program is a success for them. At the same time, there are hundreds of tribes suffering from a

fractionated land base and more must be done immediately to ensure this once-in-a-lifetime program works for the benefit of Indian people.

As you know, time is of the essence because authority for the Trust Land Consolidation Fund expires on December 8, 2020—10 years after the date of final settlement of the Claims Resolution Act.

The National Congress of American Indians (NCAI) has approved a resolution urging changes be made to the land consolidation program and, most recently, has issued a letter to Interior Secretary Jewell urging the Buy-Back Program be opened up to additional tribes in an expeditious manner.

I have included copies of NCAI's resolution and NCAI President Cladoosby's letter to Secretary Jewell to this prepared statement.

As the Department moves forward in implementing the Buy-Back Program, the Congress should re-consider two key issues in order to achieve the maximum value for the \$1.9 billion it has authorized:

1. The use of contracts and compacts under the Indian Self-Determination and Education Assistance Act to carry out the Program. These contracts are widely used in Indian Country, tribes have a thorough familiarity with them, and Buy-Back funding can be funneled to tribal communities through them.

As the subcommittee knows, the use of ISDEAA contracts and compacts was hotly debated by the Department and the Congress, with the department insisting they not be included in the final version of the *Cobell* settlement.

During post-enactment consultation sessions, tribes again raised the idea of using ISDEAA contracts and this suggestion was similarly rejected.

2. Congress should authorize the Department to earn interest on the \$1.9 billion fund. Currently, the Department is prohibited from seeking interest on this money and, in the process, is losing a valuable opportunity to augment the funding level contained in the original settlement.

3. Congress should encourage the Department to re-evaluate its criteria for offering cooperative agreements to tribes, and should ensure that decisions are not being made arbitrarily.

The program should be open, especially to tribes such as ours that have made viable, cost-effective proposals, and that have a proven track record of actually accomplishing the goals of Indian land consolidation. In this regard, I encourage Congress to continue its oversight of the Department's administration of this important program.

CONCLUSION

Given the opportunity, my tribe will work with the department to acquire and consolidate fractional interests owned by tribal members.

In the process, we can demonstrate to like-minded tribes that the goals of the Buy-Back Program can be accomplished if the department and tribes work collaboratively and effectively.

Thank you for your consideration of my testimony. I am happy to answer any questions you might have.

Attachments

NCAI Resolution #PDX-11-041 (2011)

NCAI Letter to Secretary Jewell (December 18, 2013)

NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #PDX-11-041



EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pawnee Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
Central Council of Tlingit & Haida
Indian Tribes of Alaska

TREASURER
W. Ron Allen
Jamestown S'Kallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Bill Martin
Central Council of Tlingit & Haida
Indian Tribes of Alaska

EASTERN OKLAHOMA
S. Joe Crittenen
Cherokee Nation

GREAT PLAINS
Robert Shepherd
Sisseton Walapeton

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shawnee Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippecanoe
Comanche Nation

SOUTHWEST
Joe Garcia
Chiricahua

WESTERN
Ned Norris, Jr.
Tohono O'odham Nation

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

TITLE: Recommending Changes to the Indian Land Consolidation Program

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

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

WHEREAS, the Department of the Interior (DOI) is seeking input from Indian country on how it should carry out the Indian Land Consolidation Program (ILCP) should the *Cobell* settlement gain final approval and the \$1.9 billion is made available for the ILCP; and

WHEREAS, although the Indian Land Consolidation Act allows DOI to enter into agreements with Indian tribes to carry out the ILCP, it does not allow DOI to enter into contracts or compacts with tribes to carry out the ILCP under P.L. 93-638, and tribes are concerned that unless these funds are contracted DOI will be unable to spend them within the 10 year period before the funds revert back to the U.S. Treasury; and

WHEREAS, NCAI supports requiring DOI to consult with tribes in planning, designing, and setting the priorities for the ILCP under the *Cobell* settlement and allowing Indian tribes to participate or assist in implementing the program; and

WHEREAS, in consultation sessions on the ILCP with DOI officials, tribal leaders made a number of recommendations on how the ILCP should be carried out should the *Cobell* settlement become final, including allowing Indian tribes to contract or compact ILCP functions under P.L. 93-638 or other mechanisms, eliminating liens on fractionated interests, and supporting estate planning efforts, among other recommendations.

NOW THEREFORE BE IT RESOLVED, that NCAI requests that DOI support, and Congress enact, an amendment to the Indian Land Consolidation Act, 25 U.S.C. § 2212(b)(3)(C), that would eliminate the prohibition on contracting the ILCP under P.L. 93-638 and instead make contracting or compacting mandatory at a tribes' request; and

BE IT FURTHER RESOLVED, that NCAI requests that DOI incorporate the following changes and concepts in the ILCP program if or when the \$1.9 billion is made available to the ILCP under the *Cobell* settlement:

(A) allowing Indian tribes to contract or compact the ILCP at tribes' request under P.L. 93-638 or some other mechanism, which would include, among other aspects of the program, (i) prioritizing and identify tracts for consolidation and locating owners; (ii) procuring appraisals or valuations of fractionated interests, (iii) access to the Trust Asset and Accounting Management System (TAAMS), including financial resources to update and confirm the integrity of TAAMS data; and (iv) any other component of the ILCP that is not explicitly prohibited by federal law from being contracted or compacted;

(B) utilize existing authority, or seek additional authority from Congress, to eliminate the lien requirement for income generating fractionated interests and instead allow tribes to collect this income; and

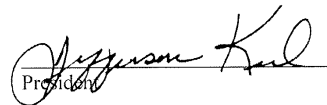
(C) support and fund estate planning efforts of Indian tribes and tribal organizations; and

BE IT FURTHER RESOLVED, that NCAI requests that if or when DOI develops a draft plan on how it will carry out the ILCP upon final approval of the *Cobell* settlement, that DOI consult with tribes on the draft plan before it is implemented; and

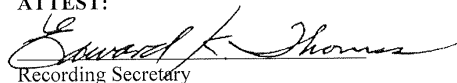
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.


President

ATTEST:


Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

December 18, 2013

Honorable Sally Jewell
Secretary of the Interior
1849 C Street, NW
Washington, D.C.

Re: Land Buy-Back Program and Tribal Cooperative Agreements

Dear Secretary Jewell:

I write today on behalf of the National Congress of American Indians regarding the fractionated land buy-back program approved by Congress in the Claims Resolution Act of 2010 (Public Law 111-291). As you know, under that Act a total of \$1.9 billion is available for purchasing fractional interests from willing individual Indian landowners for placement in trust for Indian tribes.

Never before has such a sum of money been made available to reverse the disastrous consequences of the Federal policy of allotment and restore a substantial portion of the tribal land base. But these funds are subject to several restrictions, not the least of which is the 10-year limitation of their availability. For that reason, affected tribes across the country have been urging the Department to proceed with implementing the program—over one year of this 10-year period has elapsed and the Department has just announced its first offers on two reservations. No interests have yet been purchased.

We realize that the Department has not been sitting by for the past year but has been consulting with tribes, formulating and planning its implementation strategy, and otherwise preparing for the buy-back undertaking. All of this was described by Deputy Assistant Secretary Lawrence Robert's recent testimony at a hearing before the Senate Committee on Indian Affairs on the implementation of the program and is evident from the Department's updated implementation plan. Yet it was also evident from the tribal government testimony that tribal leaders believe that many of their concerns have been ignored.

There are many aspects of the program that the Nation Congress of American Indians hopes to comment on and assist with as the Department proceeds with its rollout, there are two points we feel must be made now, at this relatively early stage.

First, it is apparent from the implementation plan¹ that the Department intends to substantially limit tribal participation in many of the most important functions of the program. We feel that it is imperative for the success of the program for the

EXECUTIVE COMMITTEE

PRESIDENT
Urban Chatooshy
Swinomish Tribe

FIRST VICE-PRESIDENT
Michael Finley
Coville Tribes

RECORDING SECRETARY
Robert Shepherd
Sisseton Wahpeton Oyate

TREASURER
Dennis Welch, Jr.
Colorado River Indian Tribes

REGIONAL VICE-PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
S. Joe Crittenden
Cherokee Nation

GREAT PLAINS
Leander McDonald
Spirit Lake Nation

MIDWEST
Aaron Payment
Sault Ste. Marie Band of Chippewa Indians of Michigan

NORTHEAST
Randy Noka
Narragansett Tribe

NORTHWEST
Fawn Sharp
Quileuit Indian Nation

PACIFIC
Rosemary Morillo
Soboba Band of Luiseño Indians

ROCKY MOUNTAIN
Ivan Posey
Shoshone Tribe

SOUTHEAST
Ron Richardson
Halwa-Saponi Indian Tribe

SOUTHERN PLAINS
Steven Smith
Kowa Tribe

SOUTHWEST
Manuel Hurt
Ute Mountain Ute Tribe

WESTERN
Arian Melendez
Reno Spawna Indian Colony

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

¹ See, also, the testimonies of Ivan Posey, Chairman of the Montana-Wyoming Tribal Leaders Council, and Grant Stafne of the Fort Peck Tribal Executive Board, Assiniboine and Sioux Tribes of the Fort Peck Reservation, at the hearing before the Senate Committee on Indian Affairs on December 11, 2013.

Department to adjust its course and open the program to greater tribal participation both in the program's decision-making and in the performance of functions and activities, including the performance of appraisals and other steps that are integral the process of purchasing of fractional interests.

Second, the Department should work with us in finding one or more ways for the \$1.9 billion to be invested and earn interest over the course of the remainder of the 10-year availability period. As Mr. Roberts himself noted in his testimony, "Although the Land Consolidation Fund is substantial, it is unlikely to have sufficient capital to purchase all fractional interests across Indian country." A sound investment strategy for \$1.9 billion over nine years will substantially increase the available capital.

Cooperative agreements with tribal governments are the key to addressing both of these matters. Many tribes have land programs that have been buying fractional interests for decades. But the cooperative agreements currently under consideration only permit tribes to participate in outreach, and do not appear to include valuation, or acquisition, or to permit tribes to hold funds in tribal accounts where they would earn interest until the transactions are completed. We are aware of a number of serious proposals for cooperative agreements with tribes that have to date been ignored.

In his recent Executive Order, President Obama said that

"... [T]he ability of tribal governments to determine how to build and sustain their own communities -- is necessary for successful and prospering communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination."

We strongly believe that the Buy Back program will be far more successful if tribal governments are able to do the work in their own communities, and that a centralized federal program run by the Department of Interior will be much less successful. We urge the Program to engage with tribes and expand the scope of activities included in cooperative agreements.

Thank you for considering this request, and for all of your efforts on behalf of tribal governments and our Nation. We look forward to working with you as this critically important program unfolds.

Sincerely,



Brian Cladoosby

cc: Kevin Washburn, Assistant Secretary—Indian Affairs

Mr. YOUNG. Thank you. Thank you very much. Questions will come when everybody testifies.
Mr. Burke.

**STATEMENT OF GARY BURKE, CHAIRMAN, CONFEDERATED
TRIBES OF THE UMATILLA INDIAN RESERVATION**

Mr. BURKE. Good afternoon, Chairman Young, Ranking Member Hanabusa, and members of the subcommittee. My name is Gary Burke. I am the Chairman of the Confederated Tribes of the Umatilla Indian Reservation. Joining me today is Bill Tovey, whose department has taken lead on the participation of the Land Buy-Back Program. I appreciate the opportunity to provide testimony on implementation of the Land Buy-Back Program under the Cobell Settlement, which we view as a historic opportunity to restore CTUIR ownership of reservation lands, as intended in our treaty of 1855.

The Land Buy-Back Program has determined that the Umatilla Reservation is the 28th most fractionated reservation in the country. Our reservation is on the list because of the Umatilla Allotment Act, passed in 1885, which resulted in the sale of a third of our reservation to non-Indian settlers, the allotment of the remainder of the reservation to tribal members, the loss of 50 percent of the allotted lands to non-Indian ownership, due to probate sale, tax foreclosures. Fifty percent of the allotment still is in trust or owned by Indians who are not enrolled in our tribe.

By the 1970s my tribe, a minority of land owners on the reservation that our treaty has established for our exclusive use. For the past three decades, the CTUIR has prioritized and dedicated considerable resources to the restoration of our reservation land base. We have allocated a portion of our tribal revenues to re-acquire reservation lands, enacted an inheritance code to prevent the loss of trust lands upon the death of an Indian land owner, establish a land trust, tribal land program to manage the re-acquisitions of the reservation lands, compacted the realty and appraisal functions of the BIA.

The experience of our tribal land program can be measured by the success. We have acquired 42,000 acres in the 740 land transactions at a cost of some \$23 million. Most importantly, our tribal staff know our reservation lands and land owners, which will be essential to the success of the Land Buy-Back Program on our reservation. As described in more detail in our written testimony, we urge Land Buy-Back Program to address these problem areas.

Land buy-back funds should be made available to reimburse tribes for the purchase of fractionated trust allotment under tribal probate or inheritance codes. The Land Buy-Back Program needs to provide adequate contract support, cost, and tribal grants for the implementation of the program. The Land Buy-Back Program needs to provide information to affected tribes on what has worked and what has not in the implementation of the program on the other reservations.

The Department of the Interior needs to commit to personnel, specifically appraisers, reviewers, to ensure the timely implementation of the Land Buy-Back Program. We believe that tribal involvement is critical in the success of the Land Buy-Back Program. We have developed a statement of work which would involve our tribe in all phases of the program. We believe that our staff, given the right experience and knowledge, can effectively implement the Land Buy-Back Program on our reservation.

CTUIR is prepared and more than willing to spend additional land buy-back funds if we were to become available within the 10-year period. The Land Buy-Back Program is a small, but important step by the United States to honor our treaty, and to reverse the failed allotment policy of the 18th–19th century.

Consistent with the current Federal land policy, Indian policy, the successful implementation of the Land Buy-Back Program can improve travel, self-determination, self-sufficiency, by reducing fractionated ownership of reservation lands, and thereby increasing the ability of tribes to make beneficial use of the lands.

Once again, I appreciate the opportunity to provide our perspectives on the Land Buy-Back Program. We look forward to working with you to ensure the success of the Land Buy-Back Program on our reservation.

With that said, I want to thank everyone for listening to the testimony. And, most of all, Elouise Cobell, on her intent of what she set out to do. Thank you.

[The prepared statement of Mr. Burke follows:]

PREPARED STATEMENT OF GARY BURKE, CHAIRMAN, CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION

Good Afternoon Chairman Young, Ranking Member Hanabusa, and members of the subcommittee, my name is Gary Burke and I am Chairman of the Board of Trustees, the governing body of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). I appreciate the opportunity to provide testimony on the implementation of the Land Buy-Back Program under the Cobell settlement. My tribe views the Land Buy-Back Program as an historic opportunity to restore CTUIR ownership of Reservation lands as intended in our Treaty of 1855.

Pursuant to Article I of our Treaty, the CTUIR ceded 6.4 million acres of its aboriginal lands in exchange for the Umatilla Indian Reservation, which was set aside for the “exclusive use” for the Cayuse, Umatilla and Walla Walla tribes. However, due to failed Federal policies of the past, we lost over two-thirds of our Reservation land base. The CTUIR has long prioritized the restoration of the Reservation land base set aside in our Treaty, and the Land Buy-Back Program will play a critical role in accomplishing that important goal.

The loss of our Reservation land base occurred shortly after our Treaty was ratified in 1859. In 1882, Congress severed 640 acres from the western end of the Reservation to facilitate the growth of the city of Pendleton. In 1885, 2 years before the General Allotment Act became law, Congress passed the Umatilla Allotment Act which allotted and diminished the Reservation established under our Treaty. The 1885 law diminished the Reservation by opening up some 90,000 acres of Reservation land for sale to settlers. The allotment of our Reservation under the 1885 law resulted in the loss of approximately one-half of tribal lands within the diminished Reservation to non-Indian ownership due to probate, sale and tax foreclosure. When we celebrated the 100th anniversary of our Treaty in 1955, the Reservation established by our Treaty had been largely lost to non-Indian ownership. Of the original Treaty Reservation of 250,000 acres, we had lost one-third of our Reservation due to diminishment and another third to non-Indian acquisition of allotments issued to tribal members.

The allotment of our Reservation has also resulted in fractionated ownership of the individual allotments issued to tribal members. According to the Updated Implementation Plan for the Land Buy-Back Program, the Umatilla Indian Reservation is the 28th most fractionated Reservation, with 1,015 fractionated allotments totaling 66,945 acres which contain 18,828 purchasable fractional interests. Fractionated ownership of these lands makes use and management of these lands difficult, and in many cases impossible, because of the large number of landowners and the difficulty in contacting and securing the consent of those landowners for a particular use. We have also learned that a large percentage of the owners of these fractionated interests are Indians that are not enrolled in our tribe. For example, when we renegotiated a pipeline right-of-way (ROW) that traversed some 13 miles through our Reservation in the late 1990s, approximately two-thirds of the owners of the allotments burdened by the ROW were Indians enrolled in tribes other than the CTUIR.

For the past three decades, the CTUIR has dedicated considerable resources to the restoration of our Reservation land base. We have enacted laws, dedicated tribal revenues and developed tribal programs to reacquire Reservation lands within our Treaty Reservation boundary and to prevent the loss of tribal trust lands upon the death of Indian landowners.

The Land Buy-Back Program provides a means to restore tribal ownership of fractionated interests in trust allotments. Our tribe has prioritized 400 fractionated allotments, out of a total of approximately 1,300 allotments on the Reservation, for acquisition under the Land Buy-Back Program. These prioritized allotments are heavily fractionated, have a large percentage of ownership by Indians enrolled in tribes outside of our own, or otherwise have important cultural, natural resource or economic and community development significance.

The CTUIR is well prepared to participate in the implementation of the Land Buy-Back Program on our Reservation. The experience and expertise of our Tribal Land Program, which had led the tribal effort to restore our Reservation land base over the past 30 years, is critical to the success of each phase of the Land Buy-Back Program. The success of our Tribal Land Program can be quantified: we have acquired 42,000 acres in 740 land transactions at a cost of some \$23 million. The CTUIR has also compacted the realty and appraisal functions from the BIA. Our Tribal GIS staff have extensively mapped our Reservation, including Reservation allotments. Most importantly, our tribal staff know and have dealt with our Reservation lands and their landowners, which will be essential to the success of the Land Buy-Back Program on our Reservation.

The CTUIR is anxious to have the Land Buy-Back Program implemented on our Reservation. We have been working diligently for more than a year to develop a plan for tribal participation in the outreach, land research, land valuation and acquisition phases of the Land Buy-Back Program. For the past 6 months, we have been negotiating for a Cooperative Agreement with the Land Buy-Back Program that defines and funds the work we would perform to implement the Program. While we are frustrated at how slow the process has been, we believe we are getting close to finalizing our Cooperative Agreement.

Based on our experience, we urge the Land Buy-Back Program to address these problem areas:

1. We believe that Land Buy-Back funds should be made available to reimburse tribes for the purchase of fractionated trust allotments under tribal probate or inheritance codes. Under our CTUIR Inheritance Code, we have the right to prevent the transfer of trust lands by will or intestacy to a non-member of the CTUIR upon the payment of fair market value. We have requested that the Land Buy-Back Program reimburse our acquisitions under this Code dating back to the Federal court approval of the Cobell settlement in November 2012. To date, the Land Buy-Back Program has not agreed to this request. The CTUIR believes our request should be granted because these probate acquisitions achieve the objectives of the Land Buy-Back Program by acquiring fractionated interest in trust lands and transferring ownership to the tribe at fair market value as determined by the Department of Interior.

2. The Land Buy-Back Program needs to ensure that it provides adequate contract support costs as a component of the grants to tribes for the implementation of the Program. As the subcommittee is aware, this has been an issue that the U.S. Supreme Court has addressed in the *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), holding that the United States had a contractual obligation to pay full contract support costs under the Indian Self-Determination and Educational Assistance Act, 25 U.S.C. §450 et seq. To date, the Land Buy-Back Program has taken the position that it can only pay contract support costs in the amount of 15 percent of the tribal grant under a Cooperative Agreement. We have also been informed that we will not receive any contract support funding for grant funds that are used to pay subcontractors or to acquire equipment. While we are mindful of, and support, the Cobell settlement 15 percent cap on administrative costs under the Land Buy-Back Program, the Land Buy-Back Program position on paying tribal administrative costs to implement the Land Buy-Back Program is too restrictive. We have proposed, and to date, the Land Buy-Back Program has not accepted, that the tribe receive administrative costs in the amount of 15 percent of its total grant. We believe our proposal would provide tribes sufficient contract support costs funding to carry out Land Buy-Back Program functions and be consistent with the 15 percent administrative expenses cap contained in the Cobell settlement.

3. The Land Buy-Back Program needs to provide more information to affected tribes on the roll-out of the Program in Indian Country. It would be helpful to us to learn about what has worked, what has underperformed and what has failed in the implementation of the Land Buy-Back Program on other reservations. It's equal-

ly important that we receive information about the rate of acceptance of offers to purchase made to Indian landowners under the Land Buy-Back Program. The CTUIR, and other participating tribes have a shared interest with the Land Buy-Back Program in the success of the Program. The CTUIR wants to learn from, and benefit by, the successes (and the failures) of other tribes participating in the Land Buy-Back Program.

4. The Department of Interior needs to commit the necessary personnel to ensure the timely implementation of the Land Buy-Back Program. We have particular concerns regarding the time associated with the review and approval of our appraisals of the fractionated trust allotments that we have prioritized for purchase under the Land Buy-Back Program. These reviews will be conducted by the Office of Appraisal Services (OAS). The CTUIR has proposed to conduct appraisals and have offer letters sent out on the 400 allotments we have prioritized for purchase in three waves: the first and second wave will involve 150 allotments and the third wave will be of 100 allotments. The timing for our outreach efforts, the appraisal of the allotments and the schedule for mailing out offers are dependent upon a timely review and approval of the appraisals by OAS.

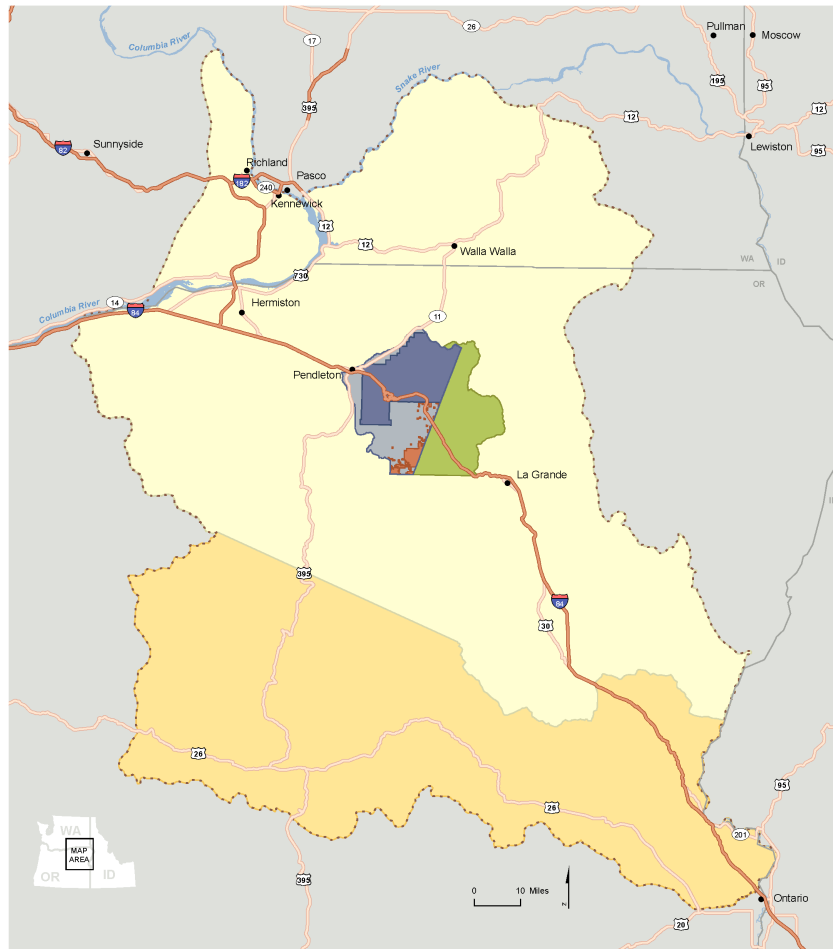
Since Congressional approval of the Cobell settlement in the Claims Resolution Act in 2010, the CTUIR has focused on the Land Buy-Back Program to consolidate tribal ownership of heavily fractionated allotments and to restore CTUIR ownership to those allotments. Our staff have worked diligently with Interior Department and Land Buy-Back Program officials to prepare for our participation in the implementation of the Land Buy-Back Program on our Reservation. Once we finalize our Cooperative Agreement and the associated Scope of Work, we are prepared to begin outreach to Indian landowners, to appraise the prioritized allotments and to assist in the acquisition of these fractionated interests. With increased tribal ownership of these allotments, and the associated decrease in fractionated ownership, we will be better able to use our Reservation land base to meet the needs of our tribal members. The United States will also benefit under the Land Buy-Back Program due to the reduction in costs associated with the probate of these fractionated interests and the management of IIM accounts that hold the income generated on these trust allotments.

Most importantly, the Land Buy-Back Program is a small but important step by the United States to honor our Treaty and to reverse the failed allotment policy of the 19th century. Consistent with current Federal Indian policy, the successful implementation of the Land Buy-Back Program can improve tribal self-determination and self-sufficiency by reducing fractionated ownership of Reservation lands and thereby increasing the ability of tribes to make beneficial use of those lands.

This completes my testimony. Once again, on behalf of the CTUIR, I appreciate the opportunity to provide our perspectives on the Land Buy-Back Program. We look forward to working with the subcommittee and the Land Buy-Back Program to ensure its success on our Reservation.

Tribal Lands: Historical Boundaries

The Confederated Tribes of the Umatilla Indian Reservation



- Surveyed Treaty Boundary:** In 1871, the Reservation Boundary was surveyed for the federal government. Although the Treaty of 1855 described an area of 500,000 acres, this boundary contains only approximately 245,000 acres.
- Eastern Treaty Boundary:** This boundary contains an additional 230,000 acres excluded from the reservation during the Reservation Survey of 1871.
- Diminished Reservation:** The Umatilla Allotment Act (Slater Act) of 1885 authorized the allotment and diminishment of the reservation to 120,000 acres. Land was allotted to individual Indian families.
- Johnson Creek Restoration:** In 1939, a Congressional act authorizes the Secretary of Interior to restore to the Umatilla Indian Reservation 14,000 acres of Federal lands.
- Ceded Lands (as identified by Royce in 1897):** This area displays lands ceded to the United States in the Treaty of 1855, based on an 1897 Royce interpretation.
- Additional Ceded Lands:** As adjudicated in CTUIR v. Maison II (1960) and CTUIR v. Maison III (1966).
- Aboriginal Title Lands:** This boundary identifies lands owned and occupied by right of aboriginal possession by a tribe for an extended period of time immediately prior to treaty making. In 1960 and 1966, the U.S. District Court for Oregon explicitly described this boundary, and reaffirmed the exclusive rights of Tribal members for hunting, fishing and gathering within this boundary. (CTUIR v. Maison II & CTUIR v. Maison III).

QUESTIONS SUBMITTED FOR THE RECORD BY RANKING MEMBER COLLEEN HANABUSA
TO CHAIRMAN GARY BURKE, CONFEDERATED TRIBES OF THE UMATILLA INDIAN
RESERVATION (CTUIR)

Question 1. What are the day-to-day effects of having such a fractionated reservation?

Answer. As mentioned in my testimony, the 1885 Umatilla Allotment Act not only diminished our Reservation, it allotted what remained of the Reservation to individual tribal members, leaving very little land in tribal trust status. Over three-quarters of the trust lands on our Reservation are allotted trust lands, and the large majority of those allotments are heavily fractionated. Again, as pointed out in my testimony, our Reservation has 1,015 fractionated allotments (out of a total of 1,300 allotments on the Reservation) totaling 66,945 acres which contain 18,828 fractional interests (i.e., approximately 18 fractional interests per allotment).

The fractionalized ownership of trust allotments on our Reservation affects the day-to-day management and use of these allotted lands for the tribe, the Indian landowners and private businesses doing business in Indian Country. The challenges and costs caused by this fractionalized ownership are too numerous to count, but set forth below is a representative sample:

- (a) *Land Use.* Our Reservation has 1,015 allotments that are fractionated with over 23 percent having greater than 20 landowners. These allotments include productive farm, timber and grazing lands that, in many cases, cannot be used because of the sheer number of landowners and the cost, difficulty and time associated with securing landowner consent.
- (b) *Probate.* The CTUIR has adopted an Inheritance Code under the Indian Land Consolidation Act that permits (in most cases) the tribe to prevent the transfer of allotted trust lands to non-Indians and non-CTUIR members upon the payment of fair market value to the heirs. Upon the death of an Indian landowner, the probate process has become very expensive and time consuming due to the large number of fractionated interests in trust allotments. This expense is not only borne by the CTUIR but also by the Department of Interior's Bureau of Indian Affairs (BIA) and the Office of Hearings and Appeals (OHA). Complicating this matter further is the recent decision by OHA to close its office within the Pacific Northwest BIA Regional Office in Portland and to have CTUIR probates handled by an Administrative Law Judge (ALJ) in the Sacramento office. The decision to close the Portland OHA office was done without any tribal consultation. There is a clear need for an OHA office in Portland because of the Inheritance Codes that either Congress has enacted or the Department of Interior has approved for the Columbia River Treaty Tribes, which includes the CTUIR. Each of these tribal codes are similar and the tribes and tribal members would benefit by having an ALJ located in Portland who became familiar with our codes so that they could be implemented with some consistency.
- (c) *Farm Leasing.* The CTUIR has compacted the BIA realty functions and we manage the leases of allotted farmlands. Annually, there are renewals of close to 100 plus farm leases and over 120 USDA/FSA contracts. Over 4,000 lease and contract payments are distributed to the fractionated land owners. The workload has increased for the tribal realty staff, as well as the BIA who approves the leases and the Office of Special Trustee who oversees the Individual Indian Money Accounts.
- (d) *Salmon and Floodplain Restoration.* The CTUIR has been actively engaged in restoring salmon runs in the Umatilla River and its tributaries to protect the exercise of our Treaty reserved fishing rights. Key to this effort has been restoring floodplains and riparian habitat that salmon and other aquatic species require, which has required the consent of allotment landowners for access and to perform this important work. Again, securing this consent has been made considerably more expensive and time consuming due to the large number of landowners and the difficulty of locating many of those landowners.
- (e) *Management of Timber and Grazing Lands.* The CTUIR efforts to manage and protect timber and grazing lands on our Reservation are also hampered by the fractionalized ownership of trust allotments. We have had timber thinning operations delayed, or stopped altogether, due to the inability to make contact with and get the consent of the landowners involved. Similar challenges are confronted by our efforts to manage and protect grazing lands.
- (f) *Housing.* The development of mutual help homes on trust allotments has been a particular source of friction due to fractionalized ownership. These mutual

help homes were constructed by our Housing Authority pursuant to a lease between the landowners and the Housing Authority. However, once the lease expires, the mutual help homeowner needs authorization from the allotment landowners for continued occupancy of the home. Securing this landowner consent has been difficult, and in many cases the consent has not been received, because the landowner(s) who signed the lease when the mutual home was built has since died and the number of landowners has increased dramatically when the lease expires. We continue to deal with mutual help homeowners who have paid for their homes that are on allotments where the homeowner has been unable to secure the consent of the numerous landowners.

- (g) *Utility Rights-of-Way*. The cost, delays and work associated with fractionalized ownership of allotments is not only borne by the CTUIR and its members, it is also borne by companies that do business in Indian Country—such as utilities. On our Reservation, we have rights-of-way for electrical, water, sewer, natural gas and cable utilities that have fixed terms. These utilities incur considerable costs and dedicate considerable personnel and time to locating landowners and securing their consent for right-of-way renewals.

Question 2. Your testimony notes that one of the issues you face is trying to consolidate fractionated shares—many of which are owned by non-tribal members. Are there special considerations the Department must factor in to ensure you are being serviced effectively through the Land Buy-Back Program?

Answer. As mentioned in my testimony, the CTUIR has prioritized 400 fractionated allotments and 259 mineral only interests for purchase under the Land Buy-Back Program. One of the important criteria we used in selecting these 400 fractionated allotments was the percentage of non-CTUIR member owners of fractionated interests in the allotment. Therefore, it will be critical that Land Buy-Back funds be used to purchase fractionated interests in these 400 prioritized allotments to restore CTUIR ownership to Reservation lands reserved for our “exclusive use” in our Treaty of 1855.

Finally, I appreciate Chairman Young’s comments at the close of the hearing. We have also been concerned that the Land Buy-Back Program has been managed by Department of Interior officials without any direct involvement of tribal representatives. We also agree with the Chairman’s statement that the sooner our tribal lands are consolidated the better it will be for tribes. I thank Ranking Member Hanabusa for your further interest in my testimony and the work of the subcommittee to improve the implementation of the Land Buy-Back Program.

Mr. YOUNG. Sir, thank you for your precise statement. For the next two guys, 5 minutes right on the button, so thank you. Mark, you are up.

STATEMENT OF MARK L. AZURE, PRESIDENT, FORT BELKNAP TRIBAL COUNCIL, FORT BELKNAP INDIAN COMMUNITY

Mr. AZURE. Good afternoon, Mr. Chairman, committee members, and guests. Congressman Daines, I want to thank you for allowing me to be here to testify on behalf of the 7,000 enrolled members at Fort Belknap from the two tribes, the Assiniboiné and the Gros Ventre.

I was going to read the testimony, but I won’t, because you are keeping me at 5 minutes, but I want to echo what Chairman Burke, Chairman Berrey and Chairman Finley are talking about, and that at Fort Belknap, you know, we feel that we haven’t been part of this process. And we have made several attempts to do that, to send in scope of work, cooperative agreements. And waiting, and waiting, and waiting, and not hearing back from the folks that are on the other end, you pick up the phone and it is a dead dial tone there. So we want to be part of that.

And I want to echo that the outreach should come from tribes, not somebody out here in DC. I know my people, they know me.

I think they are going to trust me more than they will trust anybody else involved in this, whether it is the BIA or the Department of the Interior, those staff members.

We have the same concern, that the overall settlement money is not in an account gaining interest, and that we can't seem to get our hands on even some administrative money to help us implement this thing and get it rolling. And that the outreach that is there now, it is a 1-800 number at a regional office somewhere. When our tribal members call it, they might not receive anything or hear a voice message, and so they are not going to try back, and they are going to come frustrated to me, and I am going to have to try to explain to them that there is nothing I can do for you right now, other than come out here to DC, when the opportunity arises, and give testimony, and hope that changes how this plan is set in place.

I guess, other than that, Mr. Chairman, I will yield the remaining time, and just hope that this committee hears everybody on this panel loud and clear, that the way this thing is going now, it is not working. Thank you.

[The prepared statement of Mr. Azure follows:]

PREPARED STATEMENT OF MARK L. AZURE, PRESIDENT, FORT BELKNAP TRIBAL COUNCIL, 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 implementation 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 U.S. 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 potentially could 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 35 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, and 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 has 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 10 year limit on the availability of these funds, beginning in November, 2012.

Unfortunately, we 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.

Again, we received *no* feedback on our June, 2013 proposal. Instead, DOI, almost a year after funds became available for purchasing lands, in the fall, 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 18 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 through our existing processes. Regrettably, we are no closer to purchasing these lands than when we started.

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”.¹ 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 nearly 18 months after those goals were drafted, and we are discouraged that neither of these goals are progressing.

As far as we know, the Billings Regional Office of the BIA does not have a clear plan to implement the Land Buy-back Program for 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 6 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 needed 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.

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 op-

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

portunity 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 18 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.

Thank you again for the opportunity to provide our perspective.

Mr. YOUNG. Thank you. We do have your testimony submitted, and definitely we will read it. I do appreciate that comment, because we have a vote on, but I want to finish this hearing.

And so, Mr. Grant, you are up.

Mr. STAFNE. Thank you, Mr. Chairman.

Mr. YOUNG. That mic on?

Mr. STAFNE. Yes, it is.

Mr. YOUNG. Pull it into you.

Mr. STAFNE. I will take President Azure's time, so, no.

[Laughter.]

Mr. YOUNG. You see this thing here, buddy?

Mr. STAFNE. OK, OK.

STATEMENT OF GRANT STAFNE, COUNCILMAN, TRIBAL EXECUTIVE BOARD, FORT PECK ASSINIBOINE AND SIOUX TRIBES

Mr. STAFNE. Good afternoon. On behalf of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation, as well as the Montana-Wyoming Tribal Leaders Council, I thank you for your interest in this important subject. My name is Grant Stafne. I am a member of the Fort Peck Tribal Executive Board. I would like to thank Chairman Young, Congressman Daines, and the members of the subcommittee, for holding this hearing.

The settlement of the Cobell litigation presents the United States with the opportunity to accomplish great good to redress decades of mismanagement, and strengthen tribal government administration of tribal lands, and advance economic security. Tribes obviously welcome any programs that have the potential to undo the devastation of fractionated land ownership that began when this Congress first enacted allotment acts in 1887. The likelihood of the success of these programs can be greatly improved by incorporating a few recommendations that many tribes, including Fort Peck, have made. In my written testimony I have provided detailed descriptions of these recommendations, which I will now summarize.

First, with regard to the Cobell Settlement payments, Indian Country would greatly appreciate your assistance to expedite the long-overdue payments to members of the trust mismanagement class.

Second, with regard to the \$1.9 billion DOI Land Buy-Back Program for tribal nations, DOI must establish perimeters for cooperative agreements which we have handed in in June, July, August, and, just lately, I hand-delivered it to the Secretary of the Interior for funding for outreach efforts based on the size of the reservation, the number of land owners, and the amount of acreage and individual ownership. The Fort Peck Reservation is 2.1 million acres.

Of that reservation, 954,000 is still held in trust; 4,165 original allottees were allotted land on our reservation, 320 acres with timber allotments. So, as you are aware, some tracks of land on our reservation have 300, 400 owners.

Third, the Department should immediately disclose land buy-back program expenditures for administrative costs. At a minimum, the Department should provide quarterly reports to Congress and Indian tribes of its administrative expenditures and land purchases.

Fourth, tribal negotiations to obtain a cooperative agreement should occur at the regional level of the BIA, utilizing personnel familiar with our reservations, our level of fractionated ownership, and our tribal governments.

Fifth, the Department should amend its arbitrary decision to limit the appraisal shelf life to 9 months. Appraisals should have a 12-month shelf life, and a possible 1-year extension to control unnecessary costs, and to preserve the ability to make subsequent purchase offers.

Sixth, Indian tribes, not appraisers, should determine which reservation lands are purchasable.

Seventh, Interior should disclose any valuation efforts and the cost of those efforts for mineral estates.

Eight, the Buy-Back Program should not require tribes to finance all efforts to apply for and negotiate cooperative agreements, contrary to the established practices of startup and pre-award allocations in other Federal contract pursuits.

Ninth, Interior should reconsider policies that foreclose purchases at probates and exclusion of fee lands to accomplish truly meaningful land restoration.

And, tenth, in order to comply with congressionally mandated Indian self-determination policy, the Department should now engage in meaningful consultation with tribes on an implementation schedule for the Buy-Back Program, a budget for the program, purchase ceiling amounts, the mineral valuation and appraisal for each reservation. By implementing these simple recommendations, the Interior Department can live up to its responsibilities set forth by Congress under the Cobell Settlement.

[Speaking native language.]

[The prepared statement of Mr. Stafne follows:]

PREPARED STATEMENT OF GRANT STAFNE, COUNCILMAN, TRIBAL EXECUTIVE BOARD,
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

Good afternoon. On behalf of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation, I thank you for your interest in this important subject. My name is Grant Stafne. It is an honor for me to serve on our tribes' governing body, the Fort Peck Tribal Executive Board, as my parents, June and A.T. Stafne, and my uncle Caleb Shields did before me.

I would like to thank Chairman Young, Congressman Daines, and the members of the subcommittee for holding this hearing. The settlement of the Cobell litigation presents the United States with the opportunity to accomplish great good: provide redress for Indian land owners who were victims of the Interior Department's failure to provide an accounting of IIM accounts and for some mismanagement of Indian trust resources, reduce fractionated Indian land ownership, and attempt to redress the negative results of the General Allotment Act through restoration of tribal land bases that will promote Indian self-determination, strengthen and advance the economic security of tribal communities, and fulfill the United States' trust responsibility to Indians. The foundation for the trust responsibility has its

origins in our original land cessions to the United States and the Federal Government's ensuing obligation to extend its protection to Indian tribes and our reserved lands.

Tribes obviously welcome any program that has the potential to undo the devastation of fractionated land ownership that began when this Congress first enacted Allotment Acts in 1887. Sadly, in its 35-year existence, the allotment of tribal lands to individual Indians resulted in the loss of 90 million acres of tribally owned lands. Over the years, the daunting task of managing the remaining lands held by individual Indians in small fractionated interests established the basis for the Cobell litigation brought on behalf of individual Indians. Including a program to purchase fractionated land interests for restoration to tribal ownership in the Cobell settlement benefits tribes and is long overdue.

COBELL SETTLEMENT PAYMENTS

While payments to individual Indians that were members of the accounting class occurred well over a year ago, payments to tribal members in the Trust Mismanagement class of the settlement have not yet received payments. Payment dates have been delayed throughout the last year and many individuals are losing faith that payments are forthcoming. Indian Country would greatly appreciate your assistance to expedite the long overdue payments to members of the trust mismanagement class.

DOI LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS

Unfortunately, the Cobell Settlement was developed without tribal consultation or input despite the significant impact the settlement would have on tribal lands. The Land Buy Back Program funding, including funds for actual land purchases and administrative costs, were determined without tribal input and without consideration of the challenges of trust land purchases on a large scale basis. Further, the Indian Land Consolidation Act was incorporated wholesale to govern land purchases without a review of some of the complexities and burdensome provisions of ILCA, in light of the timeframe to expend all purchase funds. Indeed, the Cobell settlement ignored fundamental Federal Indian policy introduced by President Nixon that "the Indian future" should be "determined by Indian acts and Indian decisions."

DOI initially developed and released a Land Buy Back Program for Tribal Nations implementation plan that detailed the settlement components and process for implementation without tribal consultation. In the early consultation sessions, tribes were greatly concerned about: (1) the award of funds back to the Department of Interior to purchase fractionated lands; (2) the establishment of an education fund as an incentive for individuals to sell trust interests; (3) prohibiting tribes from entering into P.L. 93-638 contracts for land buy back implementation; and finally (4) that tribes were relegated to providing a priority list of tracts for DOI purchase only. However, these components of the Buy Back Program were negotiated by the parties and specifically included in the settlement and the 2010 Claims Resolution Act. Thus, despite tribal outcry on these issues, the standard response has been that neither the parties to the settlement or Congress is willing to reopen the settlement or the approving legislation. Despite the hesitancy to modify the Settlement or legislation, we would propose consideration of minor modifications to the settlement agreement and technical amendments to the legislation that would authorize P.L. 93-638 contracts for both land purchases and implementation efforts (allowing tribal access and control over both land purchase and administrative funds), and revise the management of the education fund. Tribes have repeatedly expressed their preference for allocation of the funds directly to tribes rather than to a non-profit corporation over which tribes have no control or access to funding. Clearly, education funds in the hand of tribes would best meet the education goals of tribal people. Federal funds, albeit settlement funds, awarded to non-profit entities for the benefit of tribal people flies in the face of the government to government relationship and marginalizes the desires of tribes to assist their membership meet educational goals. Justification to amend the P.L. 93-638 restriction is highlighted by the testimony below.

The Interior Department held several consultations that focused on tribal involvement in the Land Buy Back Program. The initial Implementation Plan established ceiling amounts of funds for land purchases for each of the 40 plus Indian Reservations with the most fractionated lands and Buy Back staff 'opened the door' for tribal involvement to assist with any or all of the implementation tasks of Outreach, Land Research, Valuation and Acquisition. Tribes believed they could implement any of the four tasks and would receive a portion of the total amount of available administrative funds for the efforts. Tribes actually understood they could seek 15

percent of the ceiling amount for administrative efforts. However, the Buy Back Program, without tribal consultation, moved forward with policy decisions that now limit tribal involvement to primarily to the outreach task. While we have been attempting to determine appropriate tribal involvement, DOI has proceeded with internal processes to conduct land research, modify the National Title system to generate offers and establish an acquisition process. The result is that tribes will actually only be involved in the Outreach tasks as DOI has moved forward with establishing processes for the other identified tasks which clearly further limits tribal involvement in the implementation process.

The constant revisions and lack of clear guidance in the program leaves the Fort Peck Tribes and Tribes in Montana and Wyoming frustrated and disappointed that this rare opportunity for tribal land restoration may fall short of expending all land purchase funds within the mandated 10-year period. To avoid such a pitfall, tribal support and tribal participation is critical. Tribes can best advocate for the program and discuss in detail the drawbacks of fractionated land and the benefits of tribal land consolidation.

COOPERATIVE AGREEMENTS

The Land Buy Back Program made a policy decision to utilize 'cooperative agreements' for tribal participation in the program although 'cooperative agreements' are rarely utilized in Indian Affairs and have little regulatory guidance. DOI has developed an application process to obtain a cooperative agreement that consists of a Scope of Work Template (allows tribes to specify tasks choose to undertake), a detailed Statement of Work narrative, and SF424 Forms to receive Federal assistance. However, no guidance or parameters have been established for tribes to conduct outreach efforts. Without parameters and formulas for funding, interested tribes, including Fort Peck, have engaged in a guessing game with DOI to negotiate cooperative agreements.

Since I last testified on this subject in December before the Senate Indian Affairs Committee, we have been coordinating with a Tribal Relations Liaison, with the DOI Land Buy Back Program, located here in Washington, DC to submit a statement of work that meets the program requirements, without specific guidance on those requirements. The specific cost and equipment estimates required exceed the level of specificity for other contracts with the BIA. While we have had continuous discussions with Buy-Back Program staff, I am sorry to report that we still have no agreement on basic concepts such as the amount of funding, number of staff persons, and equipment needs to finalize a cooperative agreement. Our experience at Fort Peck is consistent with that of other tribes in the Rocky Mountain Region and across large land based reservations. As of this date, a very small number of tribes have achieved cooperative agreements to participate in implementation efforts despite interest and application from many tribes.

The cooperative agreement negotiation process has been insulting to Fort Peck since I personally have worked in virtually every aspect of Indian land acquisition, primarily in local and regional real estate positions with the Bureau of Indian Affairs including the Deputy Superintendent of Trust Services at the Fort Peck Agency. Following Federal service, I went to work for my tribes as the Director of the Fort Peck Land Buy-Back program.

In a little over a year, our tribes re-acquired over 10,000 acres of land on our Reservation using tribal funds. We have the capacity, professionalism and familiarity with trust lands on Fort Peck Reservation to efficiently implement land purchases. Instead, we are wasting time and money with lengthy negotiations that have yielded no positive results.

The Buy-Back Program appears to benefit the Federal Government first, and Indian beneficiaries, in this case, tribes second. That very notion is reminiscent of the Federal Indian policies of yesterday: policies that resulted in the eradication of the American bison, the removal of Indian children, and the taking of Indian lands; policies that were intended to benefit the government in dealing with "the Indian problem."

In addition to the above suggestions to revise the settlement and legislation, we suggest the following revisions of the current DOI policy determinations to improve the implementation of the Buy Back Program.

RECOMMENDATIONS

First, DOI must establish parameters for Cooperative Agreement funding for outreach efforts based on the size of the reservation, the numbers of landowners and amount of acreage in individual ownership. Funding must be proportional to specific

outreach tasks appropriate for each particular reservation and not set at a flat \$500,000 per reservation as has been communicated to Fort Peck and other tribes.

Second, the Department should immediately disclose Land Buy Back Program expenditures for administrative costs. DOI has provided no budget information for the new positions created, both at the DC level and in Acquisition centers, no information on the costs to enhance the Trust Accounting and Asset Management System (TAAMS) to implement Land Buy Back efforts and most importantly, the cost of valuation efforts. No information has been provided, and clearly no consultation attempted, regarding expenditures of the administrative funds. Further, DOI has not disclosed financial information on the status of program purchases with the amount expended in contrast to the established ceiling amounts to effectively determine willingness of individuals to sell interests. No information on the costs for the valuation processes has been disclosed. Full transparency is necessary to determine whether the established 15 percent administrative fee amount may need modification for full expenditure of the land purchase funds and to determine how unexpended purchase funds may be reallocated. At a minimum, the Department should provide quarterly reports to Congress and Indian tribes of its administrative expenditures, land buy back purchases and time-table to keep Congress and the tribes apprised of Department progress to expend the \$1.4 billion allocation in a timely manner.

Fourth, tribal negotiations to obtain a cooperative agreement should occur at the Regional level of the Bureau of Indian Affairs utilizing personnel familiar with our reservations, our level of fractionated ownership and our tribal governments. Working with the new Tribal Liaisons at the Central Office level of the DOI has been slow and ineffective.

Fifth, the Department should amend its arbitrary decision to limit the appraisal shelf-life to 9 months. Appraisals should have a 12 month shelf-life and the possibility of a 1-year extension consistent with current appraisals of trust. The limited shelf-life will likely result in additional costs to update outdated appraisals and will foreclose sending purchase offers out a second time if little success was achieved in the first round of purchase offers.

Sixth, Indian tribes, not appraisers, should determine which Reservation lands are purchasable in Land Buy Back Program. Presently, there is no individual consultation with tribes before DOI determines which land interests are determined purchasable and non-purchasable. Tribes as the intended beneficiaries of the land purchases must be informed about the criteria to determine lands non-purchasable and have an opportunity for input on that determination. Congress should insist the BIA discontinue exercising overbroad authority and place decisionmaking authority in the hands of elected tribal governments who are accountable to tribal members.

Seventh, DOI should disclose any valuation efforts, and the cost of those efforts, for mineral estates. DOI has stated that it has the capacity to render values for mineral estates but has provided vague and topical information on the process and the extent of actual valuation efforts. Instead, it appears that DOI is expending limited administrative funds to review fractionated interests and “mineralize” those interests or determine that the mineral interest has development potential and must be excluded from the list of purchasable tracts. Excluding tracts that are “mineralized” will limit Buy Back Program success on numerous reservations including Fort Peck. DOI should allow landowners to reserve his/her mineral estates and sell the surface estates. Currently, the DOI policy for the Buy Back Program is to restrict separation of surface and mineral estates, which will deprive many individuals from participation in the Program.

Eighth, the Department should obtain the consent of the tribal government before undertaking a reservation-wide appraisal, and provide results of appraisal activities to tribes. Further, the appraisal process should be consistent with the tribal government’s land use plans.

Ninth, the Buy Back Program has determined that tribes must finance all efforts to apply for and negotiate a cooperative agreement, contrary to the established practices of startup and pre-award allocations in other Federal contract pursuits, primarily for P.L. 93–638 contracts. The application process has been burdensome and labor intensive. The Interior Department is expending Buy-Back funding setting up its own capacity to administer the Buy-Back Program. However, tribes are precluded from reimbursement for precious tribal resources that are expended the under Cooperative Agreement process. A revision of the policy to allow for startup and pre-award costs would facilitate a larger number of responsive applications.

Tenth, the DOI should reconsider policies that foreclose purchases at probate and the exclusion of fee lands to accomplish truly meaningful land restoration. Additionally, tribes that have on-going land purchase activities could be reimbursed for those purchases for a cost effective expenditure of the land purchase funds.

Eleventh, in order to comply with Congressionally mandated Indian Self-Determination policy, the Department should now engage in meaningful consultation with tribes on the implementation schedule for the Buy Back Program, a budget for the Program, purchase-ceiling amounts, the mineral valuation and mass appraisal processes, for each Reservation.

CONCLUSION

Unless Congress acts now to require meaningful consultation, it appears that the Interior Department intends to use the Buy-Back Program as nothing more than a vehicle for closure of Individual Indian Money Accounts. Surely Congress intended more when it appropriated nearly 2 billion dollars to the Land Consolidation Fund.

As now contemplated, the Department's Land Buy Back Program will have limited impact on the Fort Peck Indian Reservation. Under the Fort Peck Allotment Act, roughly two-thirds of the original 2.1 million acres of tribal lands were allotted or opened for Homesteading. Now, over half of our Reservation is held in fee simple status, mostly by non-Indians and such lands are excluded from the Buy Back Program. True land consolidation can occur on a Reservation like ours only if all interests including fee interests are purchased, including those interest that are no longer held in trust.

I will conclude by saying that while Congress struggles to determine appropriate government funding levels, Indian Country is disparately affected. Conditions in Indian Country remain among the worst in the country. Indians continue to have the highest rates of unemployment, poverty, infant mortality, shorten life expectancy, diabetes, heart disease, chemical dependency, and suicide, to name a few. The list is long and must be reversed.

These conditions are a direct result of Federal policies over the last two centuries; policies that promoted paternalistic treatment of Indians and a system of political patronage that was wholly inconsistent with the highest fiduciary obligations of the United States as our trustee. These policies, in many instances, were designed to advance well-being of non-Indians, to the detriment of the Indian population. One of those policies resulted in the loss of 90 million acres of Indian held lands. The Buy-Back Program cannot give full redress for that loss or its effects, but the Trust Land Consolidation Fund does have the potential to fulfill that to which its name aspires if implemented by the Interior Department in close partnership with Indian tribes.

Tribal governments are the ultimate beneficiaries of reducing fractionated trust parcels on reservations. To ensure that our land use goals are realized, the Department must consult with us. The BIA should expend the proceeds of the Buy-Back program only in a manner that reflects the needs of the Reservation community.

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

QUESTIONS SUBMITTED FOR THE RECORD BY RANKING MEMBER COLLEEN HANABUSA TO GRANT STAFNE, COUNCILMAN, TRIBAL EXECUTIVE BOARD, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

Question 1. With regard to Cobell Settlement payments—please help the committee understand what type of responses members of your tribe have gotten from either the Department or the Garden City Group, when they call to ask about the status of Trust Administration Class payments.

Answer. Ranking Member Hanabusa, thank you for your interest in the Cobell Settlement payments. Payments to the Trust Administration Class have been seriously delayed. Initially, the Garden City Group informed class members that payments would be made in December, 2013. However, to date no payments have been made.

Unfortunately, neither Garden City, nor the Department of Interior, has directly communicated with landowners to explain the delay. Instead, Garden City has issued public statements indicating that the delays have been caused by the Department of Interior. Interior has not communicated reasons for the delay to class members or tribal leaders. Information provided to individual landowners by the Department of Interior call center has been vague and information provided varies from call to call.

Moreover, the Department of Interior has not confirmed the final membership of the Trust Administration Class. In fact, we understand that Department has allowed submission of appeals from persons claiming omission from the historical accounting class. Tribes have not been informed regarding this appeals process, the

number of appeals filed, the criteria to resolve an individual appeal, and the financial impact of expanding the historical accounting class. The financial impact is crucial as it will reduce the amount available for Trust Administration Class payments. The inclusion of a Trust Administration Class to settle mismanagement of trust lands and assets claims generated the majority of criticism of the settlement. Given the time that has elapsed since the Cobell Settlement was announced, it is deeply troubling that Trust Administration Class members have yet to be informed regarding the timing and amounts of settlement payments.

Question 2. You criticize the Department for not conducting meaningful consultation with tribes. In your opinion, what would meaningful consultation look like and how would it differ from what the Department is presently doing?

Answer. Thank you. As I indicated in my written testimony, the Buy-Back Program was developed by the Department of Interior unilaterally, without tribal involvement, and in disregard of the congressionally mandated Self-Determination policy. Unfortunately, given the time constraints placed upon the Department for administering the Program, it is now impractical for the Department to go back and conduct meaningful consultation on the planning and development of the Program. However, in order to comply with congressional policy, the Department should, at the very least, engage in meaningful consultation with tribes and individual Indians on every affected Reservation. That consultation must necessarily pertain to the implementation schedule, purchase ceiling amounts, mineral valuations, and the appraisal processes for each Reservation.

In my written testimony, we provided the committee with 11 recommendations for improving the Program. In our view the best way for the Department to engage in meaningful consultation is engage tribes in a dialog on each of those recommendations. I will not reiterate those 11 recommendations here. Instead, I would like to highlight a couple of areas where direct consultation with individual tribes is critical.

First, the Department has given appraisers discretion to determine which Reservation lands are purchasable and which are not. In many cases these decisions have been made without consultation by the United States as the trustee, or by the tribes as an ultimate beneficiary. This grant of authority outside the trustee-beneficiary relationship is an affront to tribal sovereignty, a breach of the Trust Responsibility, and is fundamentally unfair to individual Indian landowners.

The Department should engage in one-on-one consultation with each tribe in order to determine which tracts of land are purchasable and which tracts are not. This consultation should include in-person meetings with Tribal and Federal technical staff to discuss the criteria used in determining whether tracts are purchasable. Prior to such discussions, tribes will need information from the Department specific to their Reservation concerning any criteria the Department believes appropriate for omitting certain categories of tracts.

It is important to note here the difference between tracts and interests. A tract is a parcel of land recorded and managed by the Department as a unit. Generally, tracts were allotted to individual Indians or retained by a tribe. Each tract is assigned a specific number. Interest or interests refer to the various ownership interests of a particular tract. As you know the primary purpose of the Buy Back Program is to reduce the number of highly fractionated interests.

Tribes understand that there are legitimate reasons for objective determinations as to whether particular interests are purchasable, such as interests that may be held by landowners deemed *non compos mentis*, interests held by a minor, encumbered by a life estate or interests in probate status. However, determining whether entire tracts are purchasable is a decision which requires direct tribal involvement. Additionally, tribes should have an opportunity to cure the issue rendering the entire tract as non-purchasable, such as the removal of an abandoned home, etc. The individually owned tracts are currently in trust, under Bureau of Indian Affairs management, and will remain in trust while under tribal ownership if purchased. Thus, the existence of abandoned buildings, barns, corrals, or other un-sued improvement pose no additional Bureau of Indian Affairs management responsibilities than those that already exist and should not form a basis to omit tracts from the purchasable list.

Second, the Department should immediately engage tribes in individual discussions about how the funds agreed upon in the cooperative agreement process should be held. The Department has made a unilateral decision to reimburse tribes for activities under cooperative agreements, or when deemed appropriate advance certain funds in the Department's discretion. The Department should discuss with each tribe during the negotiation of cooperative agreements what protocol can be established for tribes to draw down funding upon execution of a cooperative agreement.

We understand that the Department may wish to ensure that the funding is protected and available to provide intended services. However, there are many ways to provide such assurance, while at the same time allowing tribal programs to enhance the funds available by depositing the funds in interest bearing accounts. As we understand it, no interest is being earning on the Land Consolidation Fund.

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

Mr. YOUNG. I hope you said "thank you."

[Laughter.]

Mr. YOUNG. Because you said, "Oh, that is it, buddy"——

Mr. STAFNE. Assiniboine and Sioux. We have two tribes on our reservation.

Mr. YOUNG. OK. Mr. Grijalva, would you like to ask questions?

Mr. GRIJALVA. Thank you, Mr. Chairman. I am going to submit the questions, thank the leaders that are here, and the questions as to the difference between self-determination contracts and cooperative contracts, and sharing the frustration that you pointed out.

This has been too long, and needs to be expedited. And if there are things that we can do, as a Committee, Mr. Chairman, to expedite and still assure all the accountability that is necessary, I think we should move in that direction. Thank you.

Mr. YOUNG. I thank the gentleman, because we do plan on introducing legislation. I hope we will be working with you to solve some of these problems.

Mr. Daines.

Mr. DAINES. Thank you, Mr. Chairman, and I really do appreciate you holding this hearing, this important issue. And as you mentioned, this is a ticking time clock right now. And where is the incentive for the Federal Government? Because once the clock expires, it goes back to the Treasury.

Mr. YOUNG. Right.

Mr. DAINES. And this is why we have to be here, as the accountability here, to get something done.

As I mentioned, you know, Montana is home to seven federally recognized Indian reservations, which are among the highest fractionated in the country. At the same time, back home in Montana, our unemployment rates are at or near 50 percent out in Indian Country. And fractionation makes economic development and access to essential services very, very challenging. And navigating this Federal Government bureaucracy becomes even more complex, as we heard from our witnesses here today. And the Land Buy-Back Program has provided Indian Country with the means to improve their future. However, we hear today that the program is not working, and the hope in Indian Country is turning into frustration.

You know, I toured several of the reservations in Montana in the beginning of this year. And the implementation of the Land Buy-Back Program was the highest issue of concern for most tribes. When every tribe is experiencing similar challenges, and we heard it here. I mean we heard it across Indian Country in Montana, and now we hear it expanded across Indian Country across the United States.

I think we see that the problems here must be systemic, and I hope today's hearing sheds some light on these issues and allows us to explore ways to help this program work for Indian Country. So thank you for inviting from Montana these Montana tribal leaders, President Mark Azure of the Fort Belknap Indian Community Council, and Councilman Grant Stafne from the Assiniboine and Sioux Tribes.

Let me start with President Azure. Your testimony was enlightening. I appreciate you called the audible there, like Peyton Manning, and you just kind of spoke from your heart and your head, as well. I was struck by the dead dial tone comment. The tribes' difficulties in dealing with the BIA are unacceptable. And please know I am eager to help improve these lines of communication, and do what I can to strengthen the tribes' voice throughout this process.

But one issue that struck me was how you mentioned the Land Buy-Back Program as being "tightly administered by the bureaucracy that created the problem in the first place." It is frustrating to hear that the Federal Government struggles to fix its own mistakes.

Could you expand on how the program would improve, Mr. President, if the Fort Belknap Tribes had more involvement in the implementation of this program from the very beginning?

Mr. AZURE. Congressman Daines, I think, just on the surface, that we would be engaged from day one, that we would play a huge role in it, and that at Fort Belknap we have had a land department there, contracted from the BIA, for over 35 years. And so, we have worked those kinks out.

We understand what you have to do, and that dealing with our tribal members and I am sure these other chairmen and Councilman Stafne will say the same thing. We know those folks. And anybody in the room, in this room right now, they trust us the most. They might not trust us all the time. But out of everybody in here, they will trust us first.

And that, you know, when you are involved in this, if we are given participation, then we take ownership in it. That means it is ours, and that it is up to us to make sure it doesn't fail.

And in talking with some folks yesterday, I was told that the settlement wasn't put in place to create economic development. But you mentioned across Montana on reservations, that unemployment is at 50 percent, probably higher on other reservations. But I think, for a short term, that is exactly what it is going to do, it is going to interject dollars into our communities, and put some folks to work. And that is where I get the passion that if it means that I get to put 6 people to work or 20 people to work, then they are not depending on those other social programs that I oversee. And at some point during the fiscal year, I might have to lock the door because there is no money to pay those folks that are sitting there.

So, again, Congressman, I think it goes back to if we were allowed to participate, we would have ownership. We know the people the best, we know the land the best. And we would ensure that it wouldn't fail. Thank you.

Mr. DAINES. Thanks, Mr. President. I have a couple questions for Mr. Stafne, but I am out of time, Mr. Chairman.

Mr. YOUNG. You are out of time, and we are out of time, if you want to vote. I am going to go ahead and stay here. If you want to stay here, you are welcome.

Mr. DAINES. You know, let me get these questions going with Mr. Stafne. How much time do we have left on the vote? Is it—

Mr. YOUNG. You have 2 minutes and 41 seconds. But go ahead, and I will let you ask two more questions.

Mr. DAINES. OK, all right.

Mr. YOUNG. Then I am going to bang the gavel, so make them quick.

Mr. DAINES. All right. Mr. Stafne, you have given us a list of 10 recommendations. I wonder if you could prioritize your recommendations that will be at the top three or four.

And the second question, then I am going to have to go vote, but we will get it caught in the record, and that is you have suggested the Buy-Back Program should be administered under the Indian Self-Determination and Education Assistance Act. That is P.L. 93-638. How hard would it be for us to make that happen?

So, there are the two questions. The Chairman will record that here, and I am going to have to go off and vote. So, Mr. Stafne?

Mr. STAFNE. Thank you, Mr. Congressman, Congressman Daines, for the question.

Regarding your first question, 10 recommendations on my bullet points. Our cooperative agreements, I would put that on number one, maybe consultation and consideration of tribal interests and appraisals. Transparency, we need transparency, and then, moving the process down to Rocky Mountain Regional Office.

And 638 question, we can hopefully, with your help, get a technical amendment to the Indian land consolidation. More specifically, 25 U.S.C. § 2212, as well as a minor adjustment to the settlement agreement for Indian land consolidation. Thank you.

Mr. YOUNG. Thank you. Mr. Roberts, you have heard all this. I will give you a chance to respond, and then I will ask you a question.

Mr. ROBERTS. OK. I think, in terms of what the tribal leaders have said here at the table, I think that there are a lot of things that I agree with them about. And some of which is that what I am hearing is we want to implement this quickly and get money out to Indian Country. Right? And we are for that.

This is a \$1.9 billion program. It got up and running in December 2012. We said very shortly after it got up and running that our goal was to get initial purchases out at a couple of locations. We went to one reservation that was extremely fractionated, Pine Ridge. We went to another reservation, Makah, that sounds a little bit more like Quapaw, in terms of not the level of fractionated interests. We are having some lessons learned there, but we are looking to ramp up, and we need to ramp up, because we only have 10 years.

And I have heard, Chairman, you say it, I have heard the tribes say it, nobody wants this money to go back to Treasury at the end of 10 years. We are focused on spending all of the money over the next 10 years. And, quite frankly, some of the tribal leaders have

said this, is that the money itself, the \$1.9 billion, that is probably not enough money to solve the problem.

So, you know, we are working as fast as we can. I think that this is helpful, Chairman Berrey laying out, he is ready to go. I have heard that from a handful of other tribes. And I know that Fort Peck and Fort Belknap, I know they want to be ready to go, and I agree with them. Tribes need to be the face of this program. They are not going to sell their interests because Kevin Washburn or I are telling them to do so. They are going to do it because these tribal leaders are supportive of the program. So I think we have a great opportunity here to do that.

Mr. YOUNG. We are going to work on legislation, and not adversarially with you, I hope, and the Department. 638 was opposed by the Department. It is in the law. We have to change that. And I hope we have your support in doing so, because I think it is the smart way to go. I think it would make everybody happy at this table, and it would work much better, because they are feeling left out, even though you are doing your best.

You are relatively new on the block. I am not doing this personal, I want you to know. But when we write this legislation, because I think it will go very quickly, I want your participation in it, like listen to recommendations, so we can get this done and consolidate those fractionated areas. And there is a feeling, with all due respect, this is coming from Washington, DC. That settlement really shouldn't have been about that.

And, by the way, I opposed that settlement. I opposed it vividly, because I don't think it was enough money. If you look at the figures I had long before it was ever settled, we are in the \$27 billion range. And we ended up with \$1.9 billion. Everybody is, "Oh, that is a lot of money." You look at the mismanagement of the Department of the Interior, and the taking of monies away from the tribes by every method they had, \$1.9 billion doesn't come close to it. So I just want you to know that is where I am coming from.

So, I have, each one of you chiefs there, I guess you are all chiefs, I appreciate your statements, because you have made some progress. But I think you will work better if we have a small piece of legislation we call technical improvements upon. If we had to pass this solution, and they had this, there is no reason why it can't be done.

And, by the way, I am going to be a little nasty now. Who is in charge of this? Are you, Mr. Roberts? Are you in charge of this?

Mr. ROBERTS. No, Chairman. The Deputy Secretary, Mike Connor, and the executive board of the Department of the Interior, Secretary Salazar established the executive board. They are in charge of it. And Deputy Secretary Mike Connor chairs that board.

Mr. YOUNG. OK. Who is on the board?

Mr. ROBERTS. It is Solicitor Tompkins, Assistant Secretary Washburn, Director of BIA Mike Black, Director of BLM, and the Deputy Assistant Secretary for Technology, Information, and Business Services.

Mr. YOUNG. But there is nobody from the tribes. Is there?

Mr. ROBERTS. [No response.]

Mr. YOUNG. No. I don't want to put you on the spot now, because you didn't pick them. But, see, that is the problem. There isn't that

communication. Are all you guys going to be here tomorrow, or do you have flights out of here?

Mr. STAFNE. I will be here tomorrow.

Mr. YOUNG. The rest, can they, Larry, can they sit down with that part of that board, or the two guys in charge, and give them the suggestions they have given me, and see if we can't do some of this executively, and get it done quicker, without us having to go through legislation? Because this body, the total congressional body, is sort of like a snail that doesn't have any salt on it. It doesn't go very fast. And I would like to see this thing, because the sooner we get these reservations consolidated, it is going to be better for the tribes.

Now, not to put you on the spot, Mr. Roberts, but can they sit down and meet with these people?

Mr. ROBERTS. Well, I know Assistant Secretary Washburn is out on travel, he is not in the office tomorrow. I don't know what the other schedules are——

Mr. YOUNG. But there are two guys in charge of this you told me.

Mr. ROBERTS. Well, there are——

Mr. YOUNG. There are two guys in charge of this program. There is a board, but the board doesn't make all the decisions. You have two CEOs, or what do you call it, making these decisions, right?

Mr. ROBERTS. It is the Deputy Secretary with the board. So it is——

Mr. YOUNG. Wait a minute——

Mr. ROBERTS. The Deputy Secretary chairs the board.

Mr. YOUNG. Wait, wait. All due respect, now.

Mr. ROBERTS. Sure.

Mr. YOUNG. If that is the case, no wonder it is not working, because they don't have the time. There should be one person in charge of the Cobell solution expediting the process. A board never works, anyway, you know? I mean I am just looking for solutions, Larry.

Mr. ROBERTS. I hear you, Chairman. You know, I am happy to meet with any of these tribal leaders tomorrow that want to meet, and hear more directly from them. I know Chairman Berrey was talking about how he has had a cooperative agreement submitted. I want to talk with him about that after this hearing. I just don't know everyone's schedules. That is not in my briefing book.

Mr. YOUNG. All right. But you understand, you guys? This is the way to get this done. And if they don't want to do it, being the Department, I am going to slow-walk you, I want to know that. And then we can solve this problem. If you don't want to do it, Mr. Washburn doesn't want to do it, you know, then you are going to have a little problem. Because this settlement was inadequate to begin with, and we are trying to take that inadequacy and make it work.

Mr. ROBERTS. Yes, we are——

Mr. YOUNG. That is what I want to do.

Mr. ROBERTS. We are all on the same page, Chairman.

Mr. YOUNG. All right.

Mr. ROBERTS. We all want it to work.

Mr. YOUNG. Good enough. Well, thank you all. And there is a vote, and if I miss it, you go home and tell my constituents I

missed the vote because I was willing to sit here and to listen to your questions and your answers and your presentations. I thank you, because this is an issue I want to settle. And let's get on with it.

And, Mr. Roberts, you go back and tell Mr. Washburn that this is one of my priorities. OK? You got it. Thank you very much. The committee is adjourned.

[Whereupon, at 3:07 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE HONORABLE PETER DEFazio, RANKING MEMBER,
COMMITTEE ON NATURAL RESOURCES

Mr. Chairman, thank you for holding this hearing today. I want to begin by welcoming a fellow Oregonian, Chairman Gary Burke of the Umatilla Tribe. Chairman Burke, I had the pleasure a few weeks back of meeting some young leaders from your tribe who were in town for a Close Up trip and now I am happy to see one of their role models here in person today. I am glad you made the long trek out here and I look forward to hearing your testimony.

The \$3.4 billion Cobell Settlement was reached in order to resolve breach of trust litigation between a class of approximately 500,000 Individual Indian Money (IIM) account holders and the Federal Government. \$3.4 billion seems like a lot of money. But we have to remember, it is aimed at compensating individuals for whom the United States has a legal fiduciary relationship and toward whom it failed miserably in that duty. After over a decade of litigation, this settlement not only compensates class members directly, but also begins to address the fractionated land problem on Indian reservations.

The Department of the Interior is currently tasked with implementing the settlement and I have heard that some tribal leaders are skeptical of their methods. I look forward to hearing testimony from the Department and from tribal leaders. As this settlement is implemented, I think we not only have to keep the Department's feet to the fire, but also to be willing to legislate when appropriate to enable them to discharge their duties for the benefit of tribes.

I yield back.

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ALASKA

Thank you, Chairman Young.

I want to start by welcoming our tribal leaders who have come from far and wide to be here. Thank you for taking time out of your busy schedules to help us understand what you are facing with regard to the Cobell Settlements implementation.

Mr. Chairman, our Nation has a sordid history of not living up to its trust responsibility toward American Indians. This fiduciary obligation is, in a sense, a bargained for exchange. The United States' expansion from 13 small colonies to a continental superpower was only made possible by working with tribal leaders to exchange lands for certain rights and benefits. Generally speaking, the United States has an obligation to act as a trustee for the various tribes and individual Indians—for many of whom it holds land in trust. When it fails in that duty, it is legally responsible to compensate those affected.

The Cobell Settlement grew out of such a breach of the trust obligation whereby the Department of the Interior grossly mismanaged the assets of IIM account holders. Eloise Cobell, on behalf of a class of approximately 500,000 similarly situated individuals, began class action litigation in 1996. This dispute was finally resolved in 2012 when all appeals associated with the settlement were exhausted. Now, the Department of the Interior is charged with implementing the settlement.

Given that the same Department that caused this problem is charged with implementing its solution, it is understandable that tribes are concerned about the way the settlement is being implemented and they fear the potential for mismanagement. That is why one of the most important things lawmakers can do is to ensure the Department is implementing the settlement in a way that puts the needs and

concerns of tribes first. To that end, I appreciate you holding this hearing, Mr. Chairman, because I think the time is right for Congress to check on the Department's progress. I also think Congress should be open to acting through legislation if and when it is needed to ensure the Department has everything it needs to get the job done.

I yield back.

