Indian Affairs - Office of Public Affairs

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**For Immediate Release:** August 4, 2015
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**WASHINGTON, D.C.** – In keeping with President Obama's commitment to empowering tribal nations, rebuilding their homelands and strengthening their economies, Assistant Secretary – Indian Affairs Kevin K. Washburn today announced that he has approved the Fond du Lac Band of Lake Superior Chippewa Indians' probate code, which the Department of the Interior's Office of Hearings and Appeals (OHA) will start applying when probating trust or restricted lands within the Fond du Lac Reservation in Minnesota. The OHA will use the tribe's code to determine how an individual's trust or restricted fee lands within the reservation will pass to his or her heirs upon the person's death.

"I want to congratulate the Fond du Lac Band on becoming the next tribal government to establish its code under which trust estates within its reservation can be probated," Washburn said. "Developing its own Tribal Probate Code is a significant exercise of tribal sovereignty and is fundamental to a tribe's ability through that process to ensure that property is distributed according to their tribal member's preferences."

Approval of tribal probate codes is one of many steps the Obama Administration is taking within a larger effort to empower tribes by restoring tribal homelands while addressing the historical problems of land fractionation. Additional elements of this strategy include implementation of the Department's Land Buy-Back Program for Tribal Nations, which carries out the land consolidation provisions of the historic Cobell Settlement, as well as Helping Expedite and Advance Responsible Tribal Homeownership (or HEARTH) Act approvals, which allow federally recognized tribes with approved leasing regulations to negotiate and enter into leases without further Secretarial approvals, and prioritizing the land-into-trust process. The combination of these actions has the potential to unlock millions of acres of fractionated lands for the benefit of tribal communities.

"The Band's Probate Code will reduce land fractionation and improve its ability to make productive use of land on our reservation," said Fond du Lac Chairwoman Karen R. Diver, who met with the U.S. Secretary of the Interior Sally Jewell Tuesday morning to discuss the Band's Probate Code. "In the long run," Diver told Secretary Jewell, "the Probate Code will provide additional services to our tribal members, help the Band to reduce its housing shortage and promote economic development."

Application of tribal probate codes helps to make certain that tribal preferences for inheritance are applied during the probate process. Other crucial streamlining elements include proactive estate planning and increased participation by Indian trust property owners in the probate process. Having a will in place may help ensure that an individual's trust property is distributed according to the person's wishes and can vitally assist in the administration of the deceased's estate. Also important is the cooperation of family members with the appropriate Bureau of Indian Affairs (BIA) agency or regional office in the preparation of probate files, which further helps the OHA make progress in reducing its substantial probate caseload.

Under the American Indian Probate Reform Act (AIPRA) of 2004 federally recognized tribes have the ability to present the Department with their own tribally enacted probate codes that govern the descent and distribution of Indian trust properties within their jurisdictions. The Fond du Lac Band is only the

third tribe to gain approval of its own probate code – the others are the Northern Cheyenne Tribe in Montana and the Confederated Tribes of the Umatilla Indian Reservation in Oregon, which were approved in November 2014 and May 2008, respectively.

“The approval of an AIPRA-compliant tribal probate code for the Fond du Lac people is a good achievement as it will remind all Indian landowners that under AIPRA they need to have a written and properly executed will if they want to direct how their trust assets will be distributed to their heirs,” said Chris Stainbrook, president of the Indian Land Tenure Foundation. “They also need to know that a number of tribes have pre-AIPRA partial probate codes that strictly limit inheritance of land interests to their tribal members.”

Lands allotted to individual American Indians in the 19th and early 20th centuries now have hundreds and sometimes even thousands of individual owners, thereby making it difficult to lease or develop the parcels. As a result, highly fractionated allotments lie idle, unable to be used for any economically beneficial purpose. Because fractionation often increases when an allotment property owner dies without leaving a will, individual owners and tribes can address in part the fractionation problem through careful attention to wills and probate issues, including adoption of tribal probate codes.

The Department of the Interior holds about 56 million acres of land in trust for American Indians, with more than 10 million acres held for individuals and nearly 46 million acres for federally recognized tribes. The Department holds this land in more than 200,000 tracts, of which about 92,000 (on approximately 150 reservations) contain fractional ownership interests subject to purchase by the Land Buy-Back Program. The Cobell Settlement provided $1.9 billion to purchase fractionated interests in trust or restricted fee land from willing sellers, at fair market value, within a 10-year period.

For more information on the probate and estate planning process, please visit www.bia.gov/yourland/. For more information on the Land Buy-Back Program for Tribal Nations, please visit http://www.doi.gov/buybackprogram/index.cfm. A photo of Secretary Sally Jewell (at right) and Chairwoman Karen Diver can be viewed at https://flic.kr/p/wVzMoc.

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