

**STATEMENT OF
LAWRENCE S. ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS
ON
“IMPLEMENTING THE COBELL SETTLEMENT: MISSED OPPORTUNITY AND
LESSONS LEARNED”**

April 3, 2014

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% 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 four 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 sixty 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% 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% 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.