

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS
ON
H.R. 5020, INDIAN TRIBAL SELF-DETERMINATION
IN LAND CONSOLIDATION ACT OF 2014**

JULY 29, 2014

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 legislative hearing on H.R. 5020, Indian Tribal Self-Determination in Land Consolidation Act of 2014.

As we have addressed at previous hearings, the magnitude of fractionation in Indian Country is enormous. There are more than 2.9 million trust or restricted fractional interests spread across more than 150 reservations that are owned by more than 243,000 individuals. The Land Buy-Back Program for Tribal Nations (Buy-Back Program), created as part of the historic *Cobell* Settlement Agreement (Settlement), aims to offer individual Indian landowners fair market value payments for restoring fractionated land interests to tribal trust ownership.

The Department strongly supports tribes' right to self-determination and self-governance. President Obama recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that have a government-to-government relationship with the United States, as expressly recognized in the United States Constitution. Secretary Jewell, too, is a strong supporter of the principle of tribal self-determination, the principles of the ISDEAA, and is committed to working to further tribal self-governance.

The Success of Tribal Agreements

Although the Settlement and the Claims Resolution Act do not allow the use of Indian Self-Determination and Education Assistance Act (ISDEAA) agreements to operate Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program) activities, they allow the Buy-Back Program to enter into agreements with tribes for undertaking land consolidation tasks. Accordingly we are actively entering into cooperative agreements or more informal arrangements with tribes. Each agreement is the product of information sharing and thoughtful discussions, resulting in a tailored implementation approach for each reservation in partnership with the Department to meet the needs of its community. We actively consult with tribes to focus on achieving their acquisition priorities as much as possible. Tribes are exercising their rights of self-determination and self-governance even though formal land consolidation self-determination and self-governance programs do not exist.

Using the current authority, the Buy-Back Program has reached cooperative agreements or other arrangements with 12 tribes located in the Great Plains, Rocky Mountain, Northwest, and Western regions. The Department will continue to work with tribes in a flexible manner to ensure that tribal input and experience guide Program implementation.

The results of these cooperative efforts are significant. In the last 7 months, payments to landowners so far total more than \$84 million, and we have restored approximately 236,000 equivalent acres among four tribal nations. The Program expects to mail offers to owners with interests at no less than five additional locations later this summer and fall.

Tribes are involved in nearly all phases of the Program. All 12 tribes with cooperative agreements or other understandings are conducting outreach activities such as updating landowner contact information, notifying landowners of upcoming purchase offers, identifying willing sellers, and conducting pre-offer and post-offer outreach. Five tribes are conducting land research to prepare the necessary information about the fractionated land including mapping activities, provision of information about land use, collection of comparable sales information, or assistance with minerals evaluation. Three tribes are also conducting appraisals of tracts prioritized by the tribes for acquisition and actively working with the Department to finalize their products, which will serve as the basis for purchase offers to landowners.

Tribes also are involved in the acquisition phase by having local staff available to answer questions and notarize documents. Each agreement is the product of a tailored approach for the specific needs of the tribal community.

Deputy Secretary Michael Connor's testimony before the Senate Committee on Indian Affairs two weeks ago highlighted the Administration's record of cooperation with tribes, including the active information sharing and negotiations with eighty tribes to settle their trust-related claims reaching back many decades. He affirmed that the Program seeks to continue this strong path of partnership with tribes and highlighted the Department's early, consistent support for tribal involvement in carrying out the Program.

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To reiterate, 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 that Program. We are concerned that the authorization of a new process will cause delays as the Program addresses implementation of the provisions, and such changes would necessitate additional funding for implementation. In comparison to other federal programs, the Land Buy-Back Program's limited, ten-year time frame 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 enacted, the ten-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 the new law 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 mail and print 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 more than \$500,000 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 five days of receiving a complete, accepted offer package.

In addition, and as indicated above, additional funding could be necessary, should the bill be enacted, 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 bill were enacted 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.

The Department strives to achieve full tribal participation using cooperative agreements to facilitate tribes' exercise of their self-determination and self-governance rights, and recognizes the continued ability under H.R. 5020 to utilize cooperative agreements. They are a cost and time effective tool that provide a flexible mechanism for tribal involvement in the Buy-Back Program and define each tribe's role in implementing the Program on its reservation:

- The Department is awarding cooperative agreements more quickly. The Buy-Back Program recently entered into a cooperative agreement within 18 days and another within two days after receiving a tribe's application.
- Cooperative agreements allow for substantial tribal involvement in land consolidation activities. All tribes with cooperative agreements are performing landowner outreach, and several are also conducting land research and land valuation on reservations.
- Cooperative agreements allow the Buy-Back Program to work closely with tribes in determining how to best implement the program on a particular reservation (e.g., outreach, land research, and valuation) and tailor agreements accordingly. They ensure that the Buy-Back Program and the tribe work together as a team to utilize their strengths to ensure that land consolidation efforts on a tribe's reservation are as successful and effective as possible.

It is important to note that cooperative agreements are not mandatory for tribes to participate in the Program. Some tribes do not require financial assistance to support, promote, or help implement the Program, making a cooperative agreement unnecessary in those situations. The implementation of the Buy-Back Program will best succeed with the active involvement and commitment of tribal communities either through cooperative agreements or other arrangements. Additional agreements are being developed and will be announced in the near future.

Additionally, section 2 would amend the Indian Land Consolidation Act to require the Secretary to: "authorize the tribal government to use any interest earned on such payments [to tribes to carry out agreements] to acquire any fraction interest in, or permanent improvements located on, any tract of land which already has one or more trust or restricted fractional interests." The Department does not have the authority under the Settlement or the Claims Resolution Act to invest the Fund. Also, it is not clear from the legislation whether the intent is to allow for the investment of the implementation cost portion of the Fund, or the entirety of the Fund.

The Department is also concerned about the proposal in Section 2 regarding the acquisition of permanent improvements. Generally, the Department does not currently hold permanent improvements in trust for individual Indians. If improvements acquired were to be held in trust, this increased responsibility on the BIA could be great, as the BIA would likely have duties to perform with regard to renting, selling, permitting, and maintaining the improvements.

Finally, we note that the Department already provides to Congress the information required under the section 5 reporting requirements. The Administration and the Department also recognize the need for consultation, as required by section 6, but again note that additional funding and time may be required, if enacted.

Conclusion

The level of interest expressed by Indian Country over the past year demonstrates the importance of the Buy-Back Program and our collective desire for it to be successful. We remain committed to active participation and direct involvement of our tribal partners in fulfilling the obligations of the Settlement with individuals and achieving our common goal of maximizing this exceptional opportunity to address the very serious problem of land fractionation across Indian country in the most cost efficient and expeditious manner possible for the benefit of generations ahead.

This concludes my statement and I am happy to answer any questions you may have.