

TESTIMONY OF  
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FORT PECK TRIBAL EXECUTIVE BOARD,  
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION**

BEFORE THE  
**UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

LEGISLATIVE HEARING TITLED  
**EXAMINING THE DEPARTMENT OF THE INTERIOR'S  
LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS,  
FOUR YEARS LATER**

DECEMBER 7<sup>TH</sup>, 2016

Good afternoon. Chairman Barasso, Senator Tester and honorable members of the Senate Committee on Indian Affairs, I am Floyd Azure, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I am honored to present testimony today in support of efforts to continue and improve implementation of the Tribal Nations Land Buy-Back Program initially established by the 2010 Claims Resolution Act that included the *Cobell* settlement. The *Cobell* settlement, endorsed by Congress, provided a total of \$3.1 billion to address Individual Indian Money accounting claims, some mismanagement of underlying trust assets, and designated \$1.9 billion to purchase fractionated lands from individual Indians for restoration back to Tribes.

The General Allotment Act and subsequent allotment acts awarded lands held collectively by Tribes to individual Indians which drastically diminished Tribal land bases and resulted in a loss of over 90 million acres of Tribal lands. Individual Indian allottees and their heirs soon lost meaningful management authority of allotted lands due to the onset of fractionated ownership. Congress recognized the failure of the allotment policy and ended the practice in 1934 with adoption of the Indian Reorganization Act. Further, Acts of Congress have created tools to attempt correction of the allotment of Tribal lands and provide opportunities for Tribal acquisition of fractionated lands; however, none of these efforts provided critical funding to achieve widespread Tribal land base restoration and consolidation efforts. Land restoration efforts that reduce fractionated land ownership will enhance Tribal control over reservation lands and reduce the management responsibilities of the federal government for highly fractionated lands.

## **Fort Peck Participation in the DOI Land Buy-Back Program for Tribal Nations**

The Land Buy-Back Program for Tribal Nations created a rare opportunity to restore Tribal land bases through the Department of Interior's (DOI) purchase of fractionated trust land interests from willing individual Indian owners. DOI commenced Land Buy-Back efforts by first identifying the 40 Indian Reservations with the highest incidence of fractionation and establishing projected purchase ceilings for each Reservation. From the outset, Tribes challenged the purchase ceilings as they did not appear based on the value or number of the interests but instead on an allocation of the total available funding for each reservation. Fort Peck was ranked as the Reservation with the 6<sup>th</sup> highest number of purchasable fractionated interest with an initial purchase ceiling price of \$80,082,500.

DOI also developed an Implementation Plan that included collecting land data and research, valuation of lands designated purchasable, outreach to individual landowners and, finally, acquisition. Fort Peck has had a long-standing fee and trust land acquisition program and initially proposed to assist the Department with collecting data on Reservation lands, assisting with valuation and negotiating offers with individual landowners. However, as the program evolved, DOI utilized existing digital data for reservation lands and established a 'mass appraisal' process that relied largely on comparable land sales in areas surrounding each reservation. Thus, opportunities for meaningful Tribal involvement were diminished and only the outreach component was available for Tribal implementation.

After negotiations with DOI, Fort Peck entered into a cooperative agreement with the Department of Interior in July, 2015 to provide landowner outreach and education prior to and during implementation of the program on the Fort Peck Reservation. Pursuant to the approved outreach efforts, the Tribes held events to educate and prepare landowners for purchase offer packages. Tribes were also consulted to establish priorities for purchase. However, Fort Peck, like most other Tribes chose not to determine priorities to ensure that the Tribe did not interfere with an opportunity for all willing landowners to participate.

DOI began implementation in mid-September, 2015 and sent initial offers to landowners of Fort Peck Reservation lands that included mineral tracts under lease and production. These initial offer packages were determined in error as DOI had determined mineral tracts under production were not purchasable due to the complexities of the valuation of producing mineral tracts. Thus, the initial offers were followed by a second wave of corrected offers that excluded producing mineral tracts but did include mineral tracts under lease with a new valuation that included the mineral lease rental. Obviously, the confusion with the initial offers and corrected offers, while not applicable to all the offer packages, caused skepticism and distrust of the Buy-Back Program. Despite, the

fact that DOI and the Tribes held numerous additional outreach sessions to explain the offer packages to landowners and provide information on the valuation process, only 38.9% of purchasable fractionated interests were acquired.

At the conclusion of the program, an equivalent of 218,340 acres were acquired for the Tribes at a total cost of \$69,838,840.00, which was approximately \$11,000,000 short of the initial purchase ceiling allocated to the Fort Peck Reservation. The Land Buy Back Program greatly assisted with the overall goals of Tribal land restoration and consolidation and placed the Tribe in a minority ownership position in 3,175 tracts and a majority ownership position in 1,292 tracts. Further, the Tribe has leased a majority of the equivalent acreage acquired of 218,340 acres for a significant increase in Tribal agricultural land revenue.

However, fractionated land ownership continues to exist after the Buy-Back program. Presently, 4,609 fractionated tracts with an equivalent acreage amount of 702,332 remain in individual Indian fractionated ownership illustrating the fact that additional consolidation efforts are critical to fully restore the Fort Peck Reservation land base. Additionally, these remaining fractionated interests are an on-going management burden for the Fort Peck Agency Bureau of Indian Affairs.

### **Continuation of the Land Buy Back Program**

The Fort Peck Tribes support the continuation of the Land Buy Back Program for Tribal Nations with additional funding beyond the \$1.9 from the *Cobell* Settlement. The program has placed the Tribes in a decision-making position on many tracts and moved consolidation efforts much further toward completion. However, additional funding, beyond the *Cobell* Settlement funds, will be necessary to continue Tribal land base restoration and consolidation efforts and to decrease the costly burden of DOI management of fractionated land interests. The Land Buy-Back Program is approaching \$1 billion in land purchase expenditures with many Reservations awaiting participation. While DOI reports detail the specific number of individual landowner interests purchased, the data also reveals a significant number of interests that remain in individual ownership. With additional funding, the program can enhance purchase efforts and also return to reservations for additional waves of offers to maximize landowner participation.

### **Increase in Tribal Outreach Funding**

DOI negotiated Cooperative Agreements with Tribes, including Fort Peck, for Tribal implementation of outreach efforts to individual landowners. Tribes generally wrote proposals for staff, space and equipment needs and outreach event funds. While DOI relied heavily on Tribes to promote the Land Buy-Back program and to educate landowners on the benefits of Tribal land consolidation, the funds awarded to Tribes fell far short to meet these lofty objectives. In fact, Fort Peck received less than 1% of the

established purchase ceiling amount to conduct outreach efforts to Tribal landowners. Increased funding to Tribes for the Outreach component of implementation would maximize landowner participation. Further, DOI heavily monitored all Tribal activities for outreach with a cumbersome approval process for all activities, including travel. Tribes should be allowed the autonomy to conduct outreach efforts as they deem effective and appropriate without the burdensome oversight of the Cooperative Agreement scheme. This oversight is contrary to promotion of self-determination policies in other contractual agreements between the United States and Tribes.

### **DOI Land Purchase Infrastructure**

During the last four years, the program has developed methods and processes that have proven successful to achieve the objectives of the program, while remaining well within the administrative cost limits established in the *Cobell* Settlement. In fact, DOI reports indicate that approximately \$285 million of the funds allocated for administration remain unexpended. The program has utilized the ‘mass appraisal’ process for valuation of Reservation trust lands that has achieved tract values acceptable to individual trust landowners. Further, the program has created an acquisition process that efficiently generates landowner offers directly from the DOI’s national title system and allows for the immediate transfer of title of numerous interests from the individual landowner to the Tribes on one deed. This infrastructure has proven cost effective and efficient. The Fort Peck Tribes recommend additional funding to allow the Program to continue, without interruption, after expenditure of the *Cobell* funds, to maximize the benefits of the land purchase infrastructure.

### **Appraisal Shelf Life**

While DOI developed a cost effective ‘mass appraisal’ process that yielded satisfactory land values for individual landowners, the short shelf-life of the appraisals is not reasonable. The DOI appraisals for the Buy-Back program has a shelf-life of 9 months established by DOI policy. However, standard trust land appraisals, outside the Land Buy-Back program, have a standard shelf-life of one year and can be extended if transactions are not complete. Extending the shelf-life of the appraisals would allow for several waves of landowner offers without expending additional administrative funds to update such appraisals.

### **Appraiser Determination of Purchasable and Non-Purchasable Tracts**

Throughout the last four-year implementation of the Land Buy-Back program, Tribes have expressed confusion regarding DOI’s determination of which tracts are purchasable and which tracts are deemed non-purchasable. On the Fort Peck Reservation, many landowners complained that their purchase offers omitted tracts that they wished to sell. Fort Peck was informed that the contracted appraisers determined

which tracts to include as purchasable. Information regarding the criteria for purchasable tracts has not been clear. We understand that tracts with structures were omitted from offers regardless of whether the structure was a dilapidated outbuilding, barn or remnants of a long-abandoned home. While it makes sense to avoid an offer with an inhabited home, it does not make sense to exclude tracts with abandoned or unused structures.

Coordination and consultation with Tribes in the determination of purchasable and non-purchasable tracts would allow the Tribe to develop strategies, such as mandatory homesite leases for tracts with homes, to maximize the number of tracts for purchase. Further, Tribal investigation of tracts would avoid exclusion or omission from purchase offers for uninhabited, abandoned buildings.

### **Purchase of Non-fractionated and Fee Tracts**

The Land Buy-Back Program purchased fractionated trust lands which were defined as lands having more than one owner. Across Indian Country, some lands are still owned by one owner although these lands have the potential to become fractionated upon death of the landowner. The Program should allow for offers to purchase lands owned by one owner. Additionally, true land consolidation must include restoration of reservation fee lands to Tribal ownership. Allowing the program to purchase available fee lands would enhance consolidation and maximize Tribal control and development of reservation lands.

### **Education Scholarship Fund**

The Fort Peck Tribes understand the *Cobell* Settlement scholarship fund, capitalized by matching DOI contributions for land purchases, now has approximately \$40 million. However, the fund has resulted in only \$3 million in actual student scholarships awarded. Land acquired on the Fort Peck Reservation resulted in a significant contribution to the fund. However, the current framework for management of the fund by the *Cobell* Plaintiffs does not result in any assurance the fund will benefit members of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The Fort Tribes recommend revising the management of the scholarship fund to allow Tribal participation in the use and award of the scholarship funds. The Fort Peck Tribes, along with many Tribes, voiced concerns regarding the scholarship fund management throughout consultation on the *Cobell* Settlement. The Fort Peck Tribes have a significant need for educational funds for the Fort Peck Tribal College, student undergraduate and graduate scholarships, and funds to promote Assiniboine and Sioux language and culture. I propose developing a process for the Fort Peck Tribes to receive a percentage of the scholarship fund commensurate with the contributions to the fund from land purchases at Fort Peck.

## Conclusion

The Land Buy Back Program for Tribal Nations was implemented on the Fort Peck Reservation and a significant number of individual Indian owned fractionated interests were restored to Tribal ownership. The Fort Peck Tribes assisted with the outreach efforts through a Cooperative Agreement with DOI.

In this vain, the Fort Peck Tribes support the continuation of a DOI managed Land Buy Back Program with additional funding beyond the *Cobell* Settlement Funds. However, we think it is critical that the Buy-Back program return to Fort Peck, due to the previous erroneous offers that land-owner confusion and limited participation. To improve these efforts, I would recommend an increase in funds for Tribal outreach efforts as such efforts are critical to maximize landowner participation.

I would also recommend Tribal participation in the determination of purchasable/non-purchasable tracts and to enhance the program to purchase solely owned tracts and fee lands within the exterior boundaries of a reservation. I also recommend an increase in the length of shelf-life of appraisals to avoid costly updates to accommodate additional waves of offers on each reservation.

Finally, I recommend a revision to the *Cobell* Scholarship Fund management to allow Tribal education programs to directly receive a percentage of funds contributed from land purchases on their particular reservations. Such a scheme would insure that funds are utilized for Tribal education priorities.

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