

**STATEMENT OF  
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BEFORE THE  
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS  
HEARING ON  
THE DEPARTMENT OF THE INTERIOR'S LAND BUY-BACK PROGRAM  
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**Introduction**

Good afternoon, Chairman Barrasso, Ranking Member Tester, and Members of the Committee. Thank you for the opportunity to provide an update on the Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program) on behalf of the Department of the Interior.

I am pleased to report that the Buy-Back Program has made significant progress since I last provided testimony to the Committee. I appreciate the continued interest of the Committee and the active engagement the Program has had with Committee staff over the last several years.

The Buy-Back Program is currently completing its fourth calendar year. The first year was largely focused on planning, consultations, research, analysis, and one-on-one engagement with tribal leaders and individuals. This was a critical effort that has directly led to the significant success we have seen in just a short time. The Program thus far has made more than \$2.5 billion in offers to nearly 123,000 unique individuals – half of all eligible landowners – for interests at 34 locations. And since it began making those offers in December 2013, the Program has paid more than \$925 million to individual landowners and restored the equivalent of almost 1,700,000 million acres of land to tribal governments.

At the end of fiscal year 2016, tribal ownership was greater than 50 percent in more than 11,000 tracts consisting of nearly 1.8 million total acres. In particular, for example, the Program helped achieve nearly a 300 percent increase in the number tracts with greater than 50 percent tribal ownership at the Fort Belknap Reservation of Montana, as highlighted in our 2016 Status Report.

Every day we are seeing the difference being made by this Program, which is just one example of this Administration's commitment to provide more sustainability for landowners, their families, and tribal communities for the benefit of generations to come. The Department has been taking significant and lasting steps toward fulfilling President Obama's goal of strengthening and investing in tribal communities through this exceptional opportunity. I believe that the partnerships and collaboration we have entered into in Indian Country will have a lasting, positive impact on relationships with tribal nations for years to come.

**Program Background**

The historic legislation to ratify and confirm the 2009 settlement between Plaintiffs and the Federal government in the *Cobell* litigation was enacted in 2010. The Claims Resolution Act

provides a foundation for addressing the fractionation of Indian lands that was set in motion under the long repudiated policies of allotment and assimilation. The *Cobell* Settlement was approved with finality on November 24, 2012, following the exhaustion of appeals through the U.S. Supreme Court.

In that legislation, Congress enacted the \$1.9 billion Trust Land Consolidation Fund to compensate individuals who willingly choose to transfer fractional land interests to tribal nations at fair market value. Less than a month following final approval, the Department established the Buy-Back Program to work collaboratively across Indian Country, with both tribes and individuals, to realize this historic opportunity.

In recognition of the size and importance of the Settlement, then-Secretary Salazar established the Buy-Back Program in the Office of the Deputy Secretary. The Secretary also established an Oversight Board, chaired by the Deputy Secretary and including as members the Solicitor, the Assistant Secretary-Indian Affairs, the Director of the Bureau of Indian Affairs (BIA), and the Special Trustee for American Indians, to ensure senior level attention and to facilitate accountability and coordination across the Department. The Buy-Back Program Director is responsible for leading and coordinating the efforts of the various offices and bureaus with responsibility for assisting in implementing the Program. The Program Director reports directly to me and meets regularly with the Oversight Board.

### **Impact of Fractionation**

Although the federal policy of Allotment ended in 1934, the impacts of that policy continue to reverberate across Indian country. Approximately 90 million acres – larger than the state of New Mexico – of tribal lands were lost, many of those lands sold to non-Indians. In addition, some allotments provided to individuals were held in trust or restricted status. These trust and restricted allotments often pass to the children, spouses, and other relatives of the original and successive landowners, who thus inherit undivided common ownership interests in the land. As a result, fractionation of those original trust and restricted allotments has grown exponentially over generations.

Fractionation now affects nearly 11 million tract acres of remaining allotted land across Indian Country, locking up a significant area and creating an overly complicated land tenure status where single tracts of land, like those at Crow Creek or Navajo, have more than 1,200 landowners. When tracts have multiple co-owners, it is difficult to obtain the required approvals for leases or other uses of such lands. As a result, many tracts are unoccupied and unavailable for any purpose. For example, during FY 2016, more than 65 percent of individual owners received \$25 or less in land-related income to their Individual Indian Money (IIM) account.

In addition, as a result of fractionated ownership of allotted lands and the checker-boarded nature of land ownership patterns on many reservations, tribes are experiencing major challenges that impact tribal sovereignty and self-determination. For example, fractionated ownership can make it hard to protect or obtain access to sacred or cultural sites, and the checkerboard ownership pattern creates jurisdictional challenges and ties up land within the reservation boundaries, making it difficult to pursue economic development.

The Buy-Back Program is the primary land consolidation effort, and the results to date are notable. As of September 2016, for locations with Program sales, the total fractional interests decreased approximately 21 percent from 2013 to 2016, with some locations in the Great Plains and Rocky Mountain regions decreasing by approximately 35 percent.

## **Program Overview**

The principal goal of the Buy-Back Program is to reduce the number of fractional land interests through voluntary sales that place purchased interests into trust for tribes. These transfers consolidate trust land bases for conservation, stewardship, economic development, or other uses deemed beneficial by sovereign tribal nations.

The five overarching parameters that guide the design and implementation of the Buy-Back Program are:

- First, in 2012, the Department identified approximately 2.9 million fractional interests across approximately 150 locations that may be purchasable by the Buy-Back Program. These fractional interests are owned by more than 243,000 owners and concentrated within a few locations in Indian Country. In the first few years of implementation, the Program's schedule focused primarily on highly fractionated locations. The Department has since announced a total of 105 locations on which implementation will begin by mid-2021. The schedule, expanded in FY 2016, represents more than 96 percent of all landowners and more than 98 percent of both purchasable fractional interests and equivalent acres.
- Second, the Settlement limits the amount of money the Department may use for costs associated with the various phases of implementing the Program. By law, no more than 15 percent (\$285 million) of the Consolidation Fund may be used for implementation costs in order to maximize the amount available for purchasing fractional interests. Furthermore, the Settlement requires that the Consolidation Fund be expended by November 24, 2022. Accordingly, the Program must be cost efficient and act expeditiously when administering the Consolidation Fund.
- Third, despite the large size of the Consolidation Fund, it will not be sufficient to purchase all fractional interests across Indian Country. The value of the land corresponding to the equivalent purchasable acres exceeds \$1.555 billion. The Program estimates that more than 4 million purchasable fractionated acres (valued at several billion dollars) will remain following full use of the Consolidation Fund by 2022. The Program has primarily focused on those acquisitions that best reduce fractionation, address the effect of allotment, promote tribal sovereignty, and facilitate economic development. The Program is assessing the viability of continued efforts and new solutions to address land consolidation in the long term.
- Fourth, the Program is a willing seller program, meaning each individual landowner who receives an offer can choose to sell or not sell his/her interests. Full use of the Consolidation Fund depends on the number of interests individuals choose to sell.

- Fifth, the active participation of tribes in identifying priority tracts is a crucial component of Program implementation. The involvement of tribes in explaining what land consolidation means on their reservations is also key. Over the past four years, the Program has worked with tribes to build relationships and expand outreach efforts to increase landowner awareness.

The Program's land consolidation processes are categorized into four phases: outreach, land research, valuation, and acquisition. The outreach phase involves consultation with the tribe about various planning matters, such as tribal priorities and involvement, and working with communities so that individuals are aware of the opportunity to sell fractional interests. As this initial outreach is occurring, research concerning reservation lands happens simultaneously. Once the research is complete, the Program values fractionated tracts using various professional appraisal valuation techniques (mass appraisals, project reports, or site-specific appraisals). Finally, once fair market value determinations have been made, the Program develops an offer set and mails offer packages to eligible individuals for their consideration. Additional outreach occurs after offer packages are sent to answer landowner questions.

Although the Program is active at multiple reservations simultaneously, given this limited implementation funding, and timing and practical considerations, such as a limited appraisal validity period, the Program cannot actively operate at all locations immediately, and is only active at each location for a limited period. As the Program completes land consolidation activities at current locations, it continuously starts operations at successive locations.

### **Government-to-Government Collaboration**

Our government-to-government working relationship with sovereign tribal nations across Indian Country has directly led to the Program's successes thus far. The Program works with tribes to tailor the implementation strategy to the needs and culture of each tribe, including partnering with tribes through agreements, sharing information and data, considering tribal feedback when developing the Program's implementation schedule, and working to value and acquire lands that are a tribal priority.

To date, the Program has entered into agreements with 40 tribes to implement land consolidation activities on their reservations. These agreements are of two types and present a way for tribes to formally collaborate with the Program on implementation activities. First, the Program has used cooperative agreements, which are legal instruments similar to grants, representing the relationship between the federal government (i.e., Buy-Back Program) and a recipient of funds to perform certain activities. Second, it has entered into memoranda of agreement (also known as memoranda of understanding) with several tribes. These are used when there is an agreement to exchange information or coordinate programs but no funding is provided.

The Program provides tribes with mapping information, ownership information, and landowner information products at several points throughout the implementation process including during priority tract selection, before offers are sent, during the offer period, and after the offer period closes. Tribes can use these products to plan outreach events, conduct outreach activities, and

identify tribal acquisition priorities. Tribes may also use this information to plan for other land consolidation activities.

The Program has considered tribal feedback when developing its overall implementation strategy. For example, the Program reviewed tribes' submissions to build its expanded implementation schedule. From this Planning Initiative, the Program added 63 tribes to the schedule. The Program continues to welcome tribal feedback through meetings and its annual Listening Session.

Finally, as mentioned previously, tribes' identification of acquisition priorities is an important part of the Program. The Program works with tribes to identify priorities early in the implementation process, and, to the extent possible, considers tribal priorities during implementation. The Program also seeks to appraise these tracts or acquire fractional interests in them. Program staff provides support to tribes by using maps and other data to assist with selection of priority tracts or areas.

### **Implementation Strategy – Schedule of Locations**

The Buy-Back Program held an open solicitation from November 8, 2013, through March 14, 2014, during which tribes with jurisdiction over the most fractionated locations were invited to submit letters of interest or cooperative agreement applications to express their interest in participating in the Program. In November 2014, the Department announced 42 locations where land consolidation activities such as planning, outreach, mapping, mineral evaluations, appraisals, or acquisitions are expected to take place through the middle of 2017. By including some less-fractionated locations in early implementation efforts, the Program has gained experience and input to inform implementation at future locations.

In November 2015, the Program announced a Planning Initiative to develop an expanded implementation schedule. The two-pronged Planning Initiative gathered input from tribes and landowners. The Program received 57 Expressions of Interest from tribal governments and 27,500 individuals registered as willing sellers through the Planning Initiative's deadline of March 11, 2016. Registration as a willing seller in no way commits a landowner to sell – nor does it guarantee that a landowner will receive an offer – it was simply the best way to ensure the Program was aware of interest as a consideration for the schedule. From that review, the Department added 63 more locations to its schedule, which it announced in May 2016.

The 105 locations planned for Program implementation represent the vast majority of the total landowners and fractionated land across Program-eligible locations, representing more than 96 percent of all eligible landowners as of 2013; more than 98 percent of both purchasable fractional interests and equivalent acres; all of the 10 BIA regions with fractionated tracts; and all 19 states with fractional interests.

Based on tribal feedback, the Program has used various criteria to determine the best sequence of implementation, including: severity of fractionation (a locations number of fractionated tracts, interests, and acres); degree of ownership overlap between locations or geographic proximity; diversity of geographic locations to maximize efficiency, resources, and learning opportunities, especially for initial efforts in order to facilitate learning; appraisal complexity; overall interest

of the tribe as demonstrated through the FY 2014 open solicitation and FY 2016 Planning Initiative periods; number of owners who have demonstrated an interest in selling fractional interests; and cost and time efficiency.

Our pursuit of this aggressive implementation schedule will provide new opportunities, but it will also yield new challenges. As we work with locations that have more complicated terrains, appraisal circumstances, and ongoing legal matters, we anticipate a greater need to work closely with tribal governments to reach resolution. Items that we continue to work through in collaboration include: public domain or off-reservation lands; the potential purchase of “restricted fee” interests (which require an environmental screening process to ensure that the Department is not taking lands into trust on behalf of a tribe that may have environmental issues), and implementation of the Program on land where multiple tribes may have jurisdiction, such as the Wind River Reservation in Wyoming.

Our work to gain insight and lessons learned will remain constant throughout the life of the Program.

### **Economic & Local Community Benefits**

In addition to the significant impact we are seeing for land consolidation, money received by landowners through the Program is generating spending in local areas and supports economic activity. According to an analysis completed by the Department’s Office of Policy Analysis in FY 2016, Program payments to landowners nationwide have already contributed an estimated \$911 million in value added to the economy and \$1.7 billion in economic output, and supported about 10,000 jobs nationwide. Landowners often spend income earned from land sales in their local economies or have used this income to reinvest in reservations.

There are additional ways in which the Program is having a positive impact on tribal communities. For example, tribes earn income from newly-consolidated lands, more than \$9 million from land consolidated through the Program since calendar year 2013. Some tribes have used the new income to acquire land held in fee status.

Tribes that have participated in the Program are also exploring ways to best use newly-acquired land. For example, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation in Arizona is studying the potential commercial uses of 58 acres acquired under the Buy-Back Program. Many other tribes have plans for further development or protection of newly-consolidated lands. Some other examples of tribal initiatives include:

- The Oglala Sioux Tribe in South Dakota plans to construct several new buildings in the Wakpamni Lake Community on land consolidated through the Program, including space for local food distribution storage, office space, a conference room, community board room, multipurpose space, a civic center, and a day care. The Tribe is also embarking on a major housing program, aided by the recent acquisition of land through the Program.

- As a result of Program purchases, the Squaxin Island Tribe in Washington State is now better able to protect its world-class oyster beds. Without control of upland, there was always a threat to development or logging that would impact shellfish, especially if lands reverted back to fee due to fractionation.
- Land secured in trust for the Crow Tribe in Montana will be used for a new community water plant on land that is now 100 percent tribally owned as a result of the Program. The current water plant is not able to provide drinkable water to the growing community of approximately 5,000 individuals. This effort demonstrates how the Administration and the Tribe are working together to enhance Indian water rights, building on the 2012 Crow Tribe-Montana Water Rights Compact which authorized funding to plan, design and construct a Municipal, Rural, and Industrial (MR&I) water system and to rehabilitate and improve the Crow Irrigation Project.

## **Lessons Learned**

As we continue to implement the Program, we have incorporated lessons learned, best practices, and tribal feedback to enhance the overall effectiveness of our implementation strategy. Each of our annual Status Reports shares what we have heard and learned and how that input is being reflected in our day-to-day operations.

For example, the Program partnered with the U.S. Census Bureau to mail a survey to approximately 54,000 landowners with interests at 20 locations who were sent offers in calendar years 2014 and 2015. Nearly 6,000 landowners responded, and these responses will help the Program better understand why landowners are or are not participating in the Program and what, if any, improvements the Program can make to better serve landowners.

In March 2016, for the third consecutive year, the Program gathered tribal feedback at a Listening Session, which I hosted. The event allowed federal officials to share programmatic updates and hear from participants about improving Program implementation across Indian Country. Key topics raised or emphasized by participants included information sharing, coordination of Departmental efforts, the voluntary nature of the Program, and the importance of consolidating and restoring tribal lands to protect tribal culture and traditional practices.

Both tribes and individuals have expressed a need to make participants aware of the financial implications of receiving funds for the sale of fractional interests. Towards that end, the Program, through the Office of the Special Trustee for American Indians and its partners, has increased financial education opportunities at locations scheduled to receive offers.

In October 2015, the Program hosted a Tribal Outreach Workshop to facilitate discussion among tribes preparing for outreach and those that had recently implemented the outreach phase of the Program. Tribes shared lessons learned, including the importance of planning and communication between BIA, OST, and Program staff; soliciting support from tribal leadership; customizing outreach materials; inviting landowners to events that may live on nearby

reservations; and providing landowners with other options if they choose not to sell their land through the Program.

### **Future Work to Address Fractionation**

The reduction in fractional interests through the Program is encouraging, but the Land Consolidation Fund will not be sufficient to purchase all fractional interests across Indian Country. The Program estimates that more than 4 million equivalent purchasable fractionated acres may still exist after it fully expends the Consolidation Fund, which is expected to occur before November 24, 2022, the date by which the Settlement dictates that any remaining funds be returned to the U.S. Department of the Treasury.

Even with the Program's significant progress to date – including increasing tribal ownership in nearly 11,000 tracts, consisting of nearly 1.8 million acres, to greater than 50 percent – and the results expected through 2022, fractionation will continue to be an extremely complicated, ongoing challenge in the long term.

Sustained departmental, congressional, and tribal attention to a range of measures will likely be necessary to address the problem and maximize the value of the land base for the benefit of tribal communities. Because fractionation continues to grow each day, the progress achieved by the Program in reducing the overall number of fractional interests will be compromised absent continued efforts.

In May 2016, Secretary Sally Jewell directed the Oversight Board to pursue an analysis of options to extend the life of the Program so that additional future participants may benefit and so that the Program could return to locations where implementation has already occurred. Preliminary ideas, for discussion with Indian Country at the Program's next Listening Session, include options for continued land purchases in the long-term and policy changes aimed at helping address problems created by fractionation.

A long-term commitment to land consolidation will produce several benefits, including improving government-to-government relationships, increasing tribal sovereignty and self-determination, fostering cultural preservation, and enhancing economic and social development.

The Department looks forward to working with the Committee and leaders in the U.S. Congress on long-term strategies for land consolidation and other efforts to address the issues caused by allotment.

### **Conclusion**

The Claims Resolution Act has provided a unique opportunity for the Department and tribes, working together with substantial resources, to help address a long-standing and serious problem. The Land Buy-Back Program strengthens tribal sovereignty by transferring lands to tribes, spurring economic development and unlocking the potential of tribal lands. As we move forward together, we will continue to implement the Program in a fair and equitable a manner



that maximizes the use of funds to consolidate tribal lands through voluntary purchases from allottees.

We appreciate the Committee's interest in the Program, and look forward to continued discussions to preserve and strengthen trust lands.