**Testimony of the Confederated Salish and Kootenai Tribes**

**of the Flathead Reservation**

**Before the Senate Committee on Indian Affairs**

**Oversight Hearing on Improving the Trust System: Continuing Oversight of the Department of the Interior’s Land Buy-Back Program**

**July 16, 2014**

**Presented by Carole Lankford, Vice Chairman**

Good afternoon. I want to thank Chairman Tester for convening this hearing on one of the most important opportunities in Indian Country, namely the Department of the Interior (DOI) Land Buy Back Program (LBBP). My name is Carole Lankford. I am the Vice Chairman of the Confederated Salish and Kootenai Tribes in Western Montana. Our Tribes are strong advocates for Tribal Self Governance and for native homeland restoration.

Perhaps to understand its importance I should quickly relay to you the history of our land base. Our aboriginal territory was over 20 million acres, a significant amount of what is now western Montana and areas in surrounding states. In our Treaty of 1855 we ceded almost 19 million acres of land to the US in return from a commitment of the US – in a treaty ratified by the United States Senate – that we would have the exclusive use of the remaining 1.3 million acre Flathead Reservation. Within 50 years of the signing of that treaty the US broke its word and opened our reservation for non-Indian homesteading. By the 1930s we were the minority land holders on our own reservation with approximately 30% of those 1.3 million acres still being Indian owned. That fact should shock the conscience of every American. Today, following aggressive land purchase efforts by CSKT Tribal leaders, we now own approximately 63% of the land within the Flathead Reservation. So today, being before you, I am thankful that Montana’s Congressional Delegation is listening to the concerns of Tribal leaders, respected elders and the Indian community in regard to the Land Buy Back Program.

Most of Indian Country celebrated when the Cobell lawsuit was settled and finalized. As the members of this committee know, due to the allotting of Indian reservations and the many times whereby allotments have divided and subdivided further and further for each generation of descendants of the original Indian allotment holders, there are large parts of reservation lands with fractionated parcels that cannot be used for home building or economic developments. Therefore, most of the Tribal Nations greeted the fractionated interest purchase program of the larger Cobell Settlement with open arms.

We are grateful to be one of the first tribes to enter into a land buy back agreement with the Department of the Interior under the Cobell settlement. However, given the hoops we had to jump through and the dozens of rewrites we had to negotiate, combined with what we are hearing from other tribes, we are concerned that the implementation of this important program will not achieve the intended result, which is to reduce the number of fractionated interests.

While the CSKT do have a signed cooperative agreement for Land Buy Back, we have yet to be able to purchase one fractioned interest. We believe this is due to cumbersome program implementation and design.

Some of the program implementation errors that the CSKT are experiencing are as follows:

1. Encouraging time limited Cooperative Agreements with a limited number of purchase offers. It can take up to six months to achieve a standard mortgage from start to finish. Yet, Indian land owners are asked to make a decision to sell trust interests in a 45 day period. This short window for decision making will not encourage sales to the Tribal government. This short window does not honor nor acknowledge the Tribal attachment to Indian land. This “critical decision” in creating such a short time frame for willing sellers to make a decision to sell, may have a detrimental and irreversible negative impact on the program. We have been told that the 45 day timeframe for making a purchase decision will be modified, if necessary. That probably is a good idea. We have only 11 months left on our cooperative agreement and are limited to three purchase offers or what DOI calls waves (groups of purchase offers). We are concerned that this grouping especially on a reservation like ours where lakeside land will be valued much higher than elsewhere is going to be problematic. Interior wants to get in and get out, do appraisals only once, and offer all sales prices at once. It is not going to work.
2. Why would the DOI modify the appraisal process for Land Buy Back? Our Tribes are experiencing more delay, new reviewers, new required appraisal language, and new requirements for appraisals. The validity of the appraisal (or appraisal age) should be lengthened if local market conditions support it. Instead, the DOI initiated the Land Buy Back program with a new “shortened” shelf life for appraisals. We and other Tribal leaders have expressed this concern over shortened appraisal shelf life to the Department of the Interior numerous times.
3. The CSKT were faced with a requirement for BLM mapping of fractionated interests. This would be a requirement of the appraisal and of the determination that a fractionated interest was purchasable. This has never been a requirement for past fractionated purchases under the Indian Land Consolidation Act. Why impose new or changed standards now? The program is cumbersome enough without layering new requirements on the process and on Tribal governments. Even after just meeting with DOI reps we are not sure if the failure to have a BLM map would prevent the acquisition of a Tribal priority interest. BLM rarely comes out to the reservation and they rely on other data such as TAMS. If TAMS info conflicts with BLM data and BLM will not then issue a map, a priority acquisition might go by the wayside. That would be very troubling.
4. We are the only tribe with a provision in our agreement requiring the review appraisers to review an appraisal and respond within five days. We have sent over 60 appraisals to them and they never got back to us on a timely basis so now we have to update the appraisals. They can’t keep up with their own agreed to timeframes.

**Recommendations:**

Our recommendations for legislation and program improvement are as follows:

* There are forty (40) Tribes identified by the DOI who have 90% of all fractionated interests in Indian Country. Allow them the full term of the Cobell settlement to acquire fractionated interests. Do not limit Tribes to a 12 or 18 month Cooperative Agreement. The issue of fractionated interest ownership was created over decades and it will not be resolved in 18 months. Allow participating Tribes, at the least, the full settlement period to purchase fractionated interests with the initial purchase ceilings ($) allocated to them. This is reasonable if a long term solution and true reduction of fractionated interests is desired.
* Pass legislation to allow Tribes to compact the Land Buy Back Program under the Indian Self Determination Act and/or the Tribal Self-Governance Act.
* Allow Tribes to contract or compact the Land Buy Back Program.
* Allow Tribes to invest the land acquisition funds while managing the program to enable the Tribes to purchase more fractionated interests. The CSKT believe that our initial purchase ceiling will not be sufficient if all willing sellers decide to sell. We should be able to invest the funds and earn interest and then use that to purchase more fractionated interests during the program. That is also reasonable and a business approach to the problem.
* Assist Tribes to implement the Land Buy Back program if requested. Time and time again we have learned that Tribes want choices and options. Some Tribes may play a larger role in this program. Some may not. There is a slim chance that the funds will be spent if the program implementation is narrow, as it presently is. We support spending the funds and restoring the fractionated interests to the control of the Tribes.

There are two bills pending in the Congress right now intended to fix problems with the Land Buy Back program. One by Senator Walsh and Congressman DeFazio and one by Congressman Daines. Both bills contain good provisions. Most importantly, both bills will allow tribes to utilize the Indian Self Determination Act and the Tribal Self Governance Act to implement a land buy-back program on their reservation. The Daines bill extends the time period for the implementation of the land buy-back program from 10 to 15 years. It also allows payments to be made to tribal governments to carry out contracts or compacts and authorizes the use of interest earned on such payments to be used by the tribal government to purchase fractionated interests. It further requires annual reports to Congress (which might be a good way to hold Interior accountable) and consultation. The DeFazio-Walsh bill allows investment of the trust land consolidation funds in an interest bearing account and also contains a provision whereby the funds are invested by the Secretary and then tribes can use them to purchase fractionated interests until they are gone. While DeFazio-Walsh does not explicitly strike the 10-year availability limitation language it does away with the availability limitation timeframe entirely by specifying that the funds must be invested into an interest-bearing account and that once invested can only be used for the intended purpose (without any timeframe limitation). On the one hand we would not wish to see further delays by Interior if they are not forced to act within a specified timeframe but on the other hand extending the timeframe to 15 years in the Daines bill does not ensure that funds would not revert to the Treasury if they have not been fully expended. DeFazio-Walsh says the funds can only be used for the intended program and will not be returned to the Treasury. The notion of any of these funds possibly reverting to Treasury is counter to the purpose of the Fund and preventing that possibility would be a good idea.

Senator Tester and Committee Members we commend you for listening to Tribal leaders.

The DOI has held numerous listening sessions around the Country and we believe their consultation has been extensive. However, they have been slow to change the program implementation and design. There is still time to make the Land Buy Back Program one of the most innovative and successful land restoration programs in DOI history.

Please continue to ask Tribal leaders what will improve the program. Engage the DOI in implementing program changes requested by the Tribal communities. We have confidence that the Congress can pick and choose the provisions from both bills that will work best into one consolidated bill. It will be important to enact such a bill quickly.

Thank you.