

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

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON
IMPLEMENTATION OF THE DEPARTMENT OF INTERIOR'S
LAND BUY-BACK PROGRAM

DECEMBER 11, 2013

Good afternoon. I would like to thank Chairwoman Cantwell and the Committee for holding this hearing. You have before you the ability to ensure that the \$1.4 Billion allocated to the Trust Land Consolidation Fund is spent for the benefit of Indians and their Tribes. On behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, I thank you for your interest in this important subject.

My name is Grant Stafne. I am a member of the Fort Peck Tribal Executive Board, the governing body of our Tribes. Over the past 20 years I have worked in virtually every aspect of Indian land acquisition, primarily in local and regional real estate positions with the Bureau of Indian Affairs.

After graduating from Wolf Point High School and Haskell Indian Junior College, now Haskell Indian Nations University, I began a 20-year career with the Bureau of Indian Affairs specializing in real estate acquisition, disposal, and management. I began my career as a Realty Clerk in Acquisition & Disposal (A&D) at the Fort Peck Agency. I

was promoted to Realty Specialist in A&D first at the Fort Belknap Agency, and later the Rocky Mountain and Eastern Regional Offices in Billings, Montana, and Nashville, Tennessee. When I left from federal service I was the Deputy Superintendent of Trust Services at the Fort Peck Agency. Following federal service, I went to work for my Tribes as the Director of the Fort Peck Land Buy-Back program. In a little over a year that I served as the Tribal Land Buy-Back Director, our Tribes re-acquired over 10,000 acres of land on our Reservation using Tribal funds. Incidentally, even though that land was taken from the Tribes and granted to non-Indians under the Homesteading laws for little or no compensation, we paid the sellers fair market value to reacquire it.

This year I followed in the path of my parents, June and A.T. Stafne, and my uncle Caleb Sheilds, and ran for election to the Tribal Executive Board.

Interior's Land Buy-Back Program, using Trust Land Consolidation funding, has the potential to reduce the devastating loss of Indian lands that has persisted since this Congress first began enacting Allotment Acts in 1887. Sadly, in its 35-year existence, Allotment resulted in the loss of 90 million acres of Indian owned lands. There is no doubt that a program to restore tribal land bases and improve federal management of trust resources is beneficial and *long* overdue.

However, because the Buy-Back Program was developed by the Department of Interior *unilaterally*, and without any Tribal involvement whatsoever, it has been designed to benefit the government first, and Indian beneficiaries second. That very notion is reminiscent of the federal Indian policies of yesterday: policies that resulted in the eradication of the American bison, the removal of Indian children, and the taking of

Indian lands; policies that were intended to benefit the government in dealing with “the Indian problem.”

Almost 40 years ago, Congress declared that the new federal Indian policy would be one of Self-Determination, as President Nixon called it, “a new era in which the Indian future is determined by Indian acts and Indian decisions.” In order to comply with Congressionally-mandated policy, the Department should, at the very least, engage in meaningful consultation with Tribes and individual Indians on every affected Reservation. That consultation must necessarily pertain to the implementation schedule, purchase ceiling amounts, mineral valuations, and the appraisal processes for each Reservation.

Unless Congress acts now to require meaningful consultation, it appears that the Interior Department intends to use the Buy-Back Program as nothing more than a vehicle for closure of Individual Indian Money Accounts. Surely Congress intended more when it appropriated nearly two billion dollars to the Land Consolidation Fund; surely Congress intended the Program to achieve substantial Tribal land consolidation in order to bring a small measure of redress for the loss of 90 million acres of Indian lands.

Under the Fort Peck Allotment Act, roughly two-thirds of the original 2 million acres of Tribal lands were allotted or opened for Homesteading. Now, over half of our Reservation is held in fee simple status, mostly by non-Indians. It is inconceivable that true land consolidation can occur on a Reservation like ours without the ability to purchase of all interests. Congress and Interior must act now to address this oversight

through modifications to the settlement agreement and corresponding legislation, if necessary.

The Department has published a draft scope of work under the Program that appears to invite Tribes to participate in the various phases of implementation such as outreach, land research, valuation, and acquisition. This suggests that despite the lack of consultation, Interior nevertheless values Tribal participation. However, the Department insists that the Self-Determination Act, the model contract set forth in the Act, and the implementing regulations do not apply to the Buy-Back Program. The rejection of the Self-Determination Act as a vehicle for implementing the Program is a reversion to a time when federal Indian policy was driven by paternalism and patronage. Instead, the model Self-Determination contract and the implementing regulations should be used as guides for contracting with Tribes under the Buy-Back Program. Both Tribes and Interior have familiarity with the Self-Determination contracting process, which would promote efficiency and expediency.

Regrettably, the process being implemented by the Department for Tribes to enter into Cooperative Agreements under the Program is unnecessarily complex and has resulted in a multitude of delays. The Department has established no baseline parameters with regard to the tasks set forth in the Scope of Work, resulting in lengthy and unfocused back-and-forth negotiations. In addition, the Department is requiring Tribes to submit SF-424s which are overly complex and largely irrelevant to implementation of a program designed by buy back lands for a Tribe.

Additionally, other tasks contained in the Department's Scope of Work, such as mapping and land research, have commenced without any Tribal participation. Moreover, the implementation schedule under the Scope of Work has not been made public. Based on the initial Implementation Plan, Tribes assumed that the Program would be implemented first at the most highly fractionated Reservations. However, Interior has developed an implementation schedule without consultation with Tribes and without a release of criteria for the schedule. For Fort Peck, Interior has only acknowledged receipt of our completed application but has provided no information on where we are on the implementation schedule. This lack of communication is alarming particularly for a Reservation like ours with significant mineral development and potential. Not only has Interior left us in the dark about the implementation schedule, they have provided us with no information on how minerals will be valued.

The Department has made numerous critical policy decisions concerning the implementation of the Buy-Back Program without Tribal input and with what appears to be a complete disregard for trust responsibility the Department is obliged to administer by law. This top-down and paternalistic management style fundamentally undermines Congress' intent in appropriating money for the Program.

For example, the Department has arbitrarily determined that appraisals used under the Program will have a 9-month shelf life. Although appraisals are normally valid for 12 months, the Department has provided no information as to why this shorter time frame has any benefit to the Program or Indian beneficiaries. This decision limits co-owner purchases, which are authorized by federal law. Moreover, if a sale cannot be completed

in 9 months, *which is quite plausible in our experience*, additional costs will be incurred to update the appraisal.

In addition, the Department has given appraisers discretion to determine which Reservation lands are purchasable and which are not. These decisions will apparently be made without consultation by the United States as the trustee, or by the Tribes as an ultimate beneficiary. This grant of authority outside the trustee-beneficiary relationship is an affront to Tribal sovereignty, a breach of the Trust Responsibility, and is fundamentally unfair to individual Indian landowners. Other arbitrary decisions by the Department that may result in fundamentally unfair treatment of the Indian landowners include: denying landowners the right to appeal appraisal values; excluding real estate improvements in valuation methods; prohibiting landowners from reserving mineral interests; and engaging in massive, Reservation-wide appraisals *prior* to determining landowner interest.

Finally, the Department has closely guarded the fiscal activities of administering the program. Rather, than operating the Program transparently, the Department has refused to report on the expenditures of the administrative funds set aside under the Program. We know that the Department is spending money, even though not a single acre of land has been purchased under the Program. Without any knowledge of how much money has been spent, how can we be assured that there will be enough money to administer the Program throughout its life? We do know that the Department has determined that Indirect Costs will be capped at 15% for Tribes that enter into cooperative agreements, even though Tribes have negotiated indirect cost rates for all

federal funding. We can only hope that the government is as concerned about its own spending as it is with ours.

I will conclude by saying that while Congress struggles to reach agreement on how to fund our government, Indian Country is disproportionately affected. Conditions in Indian Country remain among the worst in the country. Indians continue to rank at the bottom of every social and economic indicator: unemployment, income, infant mortality, life expectancy, chemical dependency, suicide....

It should not be forgotten that these conditions are a direct result of federal policies over the last two centuries; policies that promoted paternalistic treatment of Indians and a system of political patronage. One of those policies resulted in the loss of 90 million acres of Indian held lands. The Buy-Back Program cannot give full redress for that loss or its effects, but the Trust Land Consolidation Fund does have the potential to fulfill that to which its name aspires.

I urge the Committee to demand meaningful consultation by the Department with Tribes and Indian beneficiaries and require the Department to execute the Self-Determination laws and policies prescribed by Congress.

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