

S. HRG. 114-536

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

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

DECEMBER 7, 2016

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

23-536 PDF

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON INDIAN AFFAIRS

JOHN BARRASSO, Wyoming, *Chairman*
JON TESTER, Montana, *Vice Chairman*

JOHN McCAIN, Arizona	MARIA CANTWELL, Washington
LISA MURKOWSKI, Alaska	TOM UDALL, New Mexico
JOHN HOEVEN, North Dakota	AL FRANKEN, Minnesota
JAMES LANKFORD, Oklahoma	BRIAN SCHATZ, Hawaii
STEVE DAINES, Montana	HEIDI HEITKAMP, North Dakota
MIKE CRAPO, Idaho	
JERRY MORAN, Kansas	

T. MICHAEL ANDREWS, *Majority Staff Director and Chief Counsel*
ANTHONY WALTERS, *Minority Staff Director and Chief Counsel*

CONTENTS

	Page
Hearing held on December 7, 2016	1
Statement of Senator Barrasso	1
Statement of Senator Daines	4
Statement of Senator Heitkamp	7
Statement of Senator Lankford	38
Statement of Senator Tester	2
Statement of Senator Udall	5

WITNESSES

Azure, Hon. Floyd, Chairman, Assiniboine and Sioux Tribes, Fort Peck Res- ervation	14
Prepared statement	16
Cobell, Turk, Treasurer, Cobell Board of Trustees	22
Prepared statement	24
Connor, Hon. Michael L., Deputy Secretary, U.S. Department of the Interior ..	7
Prepared statement	9
Monette-Barajas, Melvin, President/Executive Director, Indigenous Education, Inc.	25
Prepared statement	26
Tatsey, Hon. Terry, Vice-Chairman, Blackfeet Nation	20
Prepared statement	21

APPENDIX

Burke, Hon. Gary, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, prepared statement	41
Franken, Hon. Al, U.S. Senator from Minnesota, prepared statement	41
McClanahan, John H., Director, Land Buy-Back Program for Tribal Nations, letter	48
Onnen, Hon. Liana, Chairwoman, Prairie Band Potawatomi Nation, prepared statement	45
Weston, Hon. Troy Scott, President, Oglala Sioux Tribe, prepared statement ..	43

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

WEDNESDAY, DECEMBER 7, 2016

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

The CHAIRMAN. I call this oversight hearing to order. Let me welcome everyone back.

Today's hearing will focus on the Department of Interior's Land Buy-Back Program, including the Cobell Scholarship Fund.

In 2010, Congress passed, and the President signed into law, the Claims Resolution Act of 2010. The title in this Act, the Individual Indian Money Account Litigation Settlement, authorized and ratified the *Cobell* settlement agreement. The purpose of the settlement was to resolve a class action lawsuit regarding the Federal Government's accounting and management of over 300,000 individual Indian Trust accounts.

The settlement agreement established and deposited \$1.9 billion into the Trust Land Consolidation Fund. Those funds are to be expended during the ten-year period from 2012 to 2022.

Additionally, the settlement agreement established the Indian Education Scholarship Fund, with funds to be transferred from the Trust Land Consolidation Fund of up to \$60 million.

On December 17th, 2012, the Land Buy-Back Program for Tribal Nations was established through a secretarial order.

The Land Buy-Back Program implements the land consolidation component of the *Cobell* settlement by purchasing fractional land interests from willing sellers and then holding those newly purchased lands in trust for the respective Indian Tribes.

According to the Department of interior, there are approximately 243,000 owners of nearly 3 million fractional interests in 150 Indian Reservations. Approximately 90 percent of those interests are located within 50 Indian Reservations.

The settlement also establishes an account called the Indian Education Scholarship Holding Fund. These funds are to be used

to provide financial assistance to Native American students to defray the cost of attendance at both post-secondary vocational schools and institutions of higher education. Contributions to this fund are allocated by a formula from the Trust Land Consolidation Fund.

Last month, the Interior Department released its annual status report on the Land Buy-Back Program. The report highlights many statistics and informs us that approximately \$900 million of the \$1.9 billion has been paid to 45,600 individuals to consolidate 1.7 million acres during the last four years.

The report also suggests that despite the efforts of the Land Buy-Back Program, the \$1.9 billion provided in the settlement was not enough. There is a floor chart that is available for people to take a look at. In fact, the report states and illustrates with these graphs that you can see that, after the Land Buy-Back Program ends in 2022, the estimated growth of fractional interests will return to pre-Program levels and continue to grow.

Today's witnesses will help us determine the success and effectiveness of the Land Buy-Back Program at its four-year anniversary and should assist in the incoming Trump Administration in considering this Program's viability.

Before I turn to the Vice Chairman for an opening statement, I want to first acknowledge Senator Tester's contribution to the Committee as both Chairman and Vice Chairman. I understand Senator Udall will be incoming Vice Chairman in the 115th Congress.

When Senator Tester was chairman of the Committee, we had a good working relationship. When the roles switched, we continued to have a good working relationship in a bipartisan fashion. Nothing changed.

Let me say that in the few times we might have disagreed on policy, we always agreed on the goal, and that was bettering the lives of Tribal communities. We never lost focus, nor did we waiver.

So I want to personally thank you, Senator Tester, for your leaderships, your dedication to Indian Country. I want to also include the same thanks to your staff.

So, Senator Tester, an opening statement.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Well, thank you, Chairman Barrasso. Thank you for those kind remarks. And I want to echo those back to you. I think you are going to be moving on to a different committee as chairman this next Congress. I just want to thank you for your straightforwardness, your ability to be able to get things done on behalf of Indian Country, and, quite frankly, the, I think, honest communication that we have had. When we disagreed, we disagreed, but we weren't disagreeable. So thank you for that. And I too want to thank your staff for their good work. They have been very easy to work with and we thank you for that.

I want to thank you for holding this hearing, because I think the last hearing we had on the Land Buy-Back Program was two years ago, so I am looking forward to hearing about what progress has been made in the last couple years. Land fractionation is a serious

issue plaguing Indian Country, and I am glad to see this Committee's continued commitment to address it.

Before I go any further, though, I want to acknowledge the work of Elouise Cobell. Two weeks ago she was awarded, posthumously, the Presidential Medal of Freedom, and she could not have been more deserving. We would not be talking here today about the success of a land consolidation program or giving millions of dollars in scholarship to Native youth if it wasn't for her decades-long fight.

Her son Turk is here testifying in his capacity as board member of the Cobell Scholarship Fund, so I do want to congratulate Elouise's family on her award and thank Turk for carrying on her legacy through your hard work helping Native students across the Country.

As a result of Elouise's efforts in the *Cobell* settlement, the Buy-Back Program has already been great sized in Indian Country. Since its start four years ago, the Program has paid out over \$900 million to individual landowners with fractional interests in land on 30 reservations, restored nearly 1.7 million acres of land to Tribal Nations, and the Program still plans to reach 105 additional locations over the next five years.

Addressing the problem of land fractionalization is an important step for Indian Country. By returning these lands to Tribes, the Land Buy-Back Program has helped Tribal Governments in a number of ways, including addressing jurisdictional issues, protecting cultural and natural resources, and developing infrastructure and businesses.

The Program has also provided vital funding to the Cobell Scholarship Fund, which has already helped hundreds of Native students help pay for post-secondary education. In Montana alone, 146 Native students have received a total of \$369,000 in the Scholarship's first year. I have always believed that education is a foundation for the future of Indian Country, and I look forward to hearing more about this work from Turk and Mr. Monette.

Despite these successes, we have heard some concerns from Tribes. The Land Buy-Back Cooperative Agreement process can be cumbersome and doesn't allow for a lot of flexibility for Tribes. Many Tribes are interested in when and how the Program can continue in their communities even after its initial run.

So I hope the discussion today highlights the good work that has occurred thus far and identifies opportunities to improve it. There is no question that more can be done with this Program to address land fractionation in Indian Country.

I would like to welcome Chairman Azure of the Fort Peck Reservation. Good to have you here. Vice Chairman Tatsey from the Blackfeet for sharing their thoughts on the Land Buy-Back Program. I know Fort Beck has had a few hiccups with the program, but overall was able to consolidate over \$78 million in fractionated lands. And Blackfeet offers totaling over \$270 million have just gone out. I understand everyone has high expectations due to the level of outreach conducted by the Blackfeet Tribal members. So I want to commend you both for your traveling here today to testify and for all your service to tribal communities.

Finally, as I talked about in the opening, and as the Chairman talked about in his closing, I know everyone is aware that in the next Congress I am going to be taking over Ranking Member of the Veteran Affairs Committee. I want to assure everybody that I am going to remain engaged in tribal issues just as I have in the past. As was pointed out, Senator Udall will have this seat next Congress and will do a fine job in that capacity. But I am going to remain a member of this Committee and an active one.

There is a whole lot of work that needs to be done for Indian Country, and I am committed to make sure the Tribes across Montana and across this Country have their voices heard and that we continue to improve and uphold the trust and treaty obligations that we have. So I look forward to working with my colleagues when this Committee convenes in January.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester. Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Chairman Barrasso and Ranking Member Tester.

I would like to wish a very warm welcome to two Montana Tribal leaders we have with us today. I had a chance to see both of them in my office here this morning, Chairman Floyd Azure of the Fort Peck Tribes and Vice Chairman Terry Tatsey of Blackfeet Nation.

It is certainly a rare occasion that we have two Montanans at the witness table and we have two Montanans here on the dais. I think we are heading in the right direction with more Montanans ever here on Capitol Hill.

Let me brag a little bit about our two witnesses. Chairman Azure was selected to his current term of office in October 2015 and previously served as chair from 2009 to 2012. He also served on the Tribal Executive Board prior to that. Chairman Azure was raised on the Fort Peck Indian Reservation. He owns and operates an auto body repair shop in Poplar, Montana.

Vice Chairman Tatsey was elected to the Blackfeet Tribal Council just this past June. From 1993 until last year he served as Director of Institutional Development of Blackfeet Community College, where he developed educational programs and helped build many of the school's facilities. Prior to service to the college, he worked as a rancher for about six years, and prior to that he worked at the USDA in a research partnership with AGCanada, as well as the Blackfeet Tribe.

It was also a pleasure to visit with both of you and your fellow Tribal members on your reservations this past summer. When we were back home during the summer work period, I spent time on both your reservations.

Chairman Azure and Vice Chairman Tatsey, it is truly an honor to have you here in Washington, D.C. today. Thanks for making the long trip out.

Well, Montana is home to 12 federally recognized Indian Tribes and also the State recognized Little Shell Tribe. We have seven In-

dian reservations, which are some of the most fractionated in our Nation.

Montana was also home to Elouise Cobell, a member of the Blackfeet Nation, of course, who initiated that settlement, the famous *Cobell-Salazar* class action lawsuit on behalf of herself and nearly 500,000 fellow Native Americans which resulted in the establishment of the Land Buy-Back Program. As we know, she is the namesake of the Cobell Scholarship Fund.

As Senator Tester mentioned earlier, consolidating fractionated trust lands is critical to economic prosperity on Indian reservations and eradicating these outdated remnants of the allotment era. While not perfect, the Land Buy-Back Program has benefitted a majority of Montana's seven Indian reservations. I look forward to the witness testimonies and today's discussion.

Lastly, I do want to express my gratitude to Chairman Barrasso, Vice Chairman Tester for their service to this Committee and this Congress. I think you both have been great leaders in moving this Committee along very efficiently and effectively. I know it is the last Committee hearing we are going to have this year, and I wish you two the very best here in your new responsibilities.

The CHAIRMAN. Thank you very much, Senator Daines.
Senator Udall?

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much. I just want to echo the remarks that others have made, Chairman Barrasso and Vice Chairman Tester. The good work you have done, the bipartisan-ship, the way you have worked together. And it didn't matter whether one was in the chairman or in the vice chairman; you just continued to work in a really positive way for Indian Country.

So I thank you very much for that, and I know that Native Americans across the Country feel very good about that. And I also thank you for your kind comments about me assuming the chair. We are going to miss you. We didn't say whether you are staying on the Committee, Mr. Chairman, but we hope you are.

The CHAIRMAN. I look forward to staying on the Committee, Senator Udall, and serving with you.

Senator UDALL. Good.

The CHAIRMAN. Thank you very much.

Senator UDALL. Good. Well, we look forward to that.

I would like to briefly recognize a couple of New Mexicans on today's panel. Welcome to Mr. Melvin Monette and Deputy Secretary Mike Connor. Mr. Monette has been a tireless advocate for Indian education for many years, and we appreciate you sharing your valuable input here today.

And this is likely Deputy Secretary Mike Connor's final hearing before this Committee, at least as part of the current administration. I want to thank you for your outstanding service as Commissioner of the Bureau of Reclamation and as Deputy Secretary. You also served many years with Senator Bingaman on the Committee, so you are someone who really knows how Washington works and I hope that works for you.

New Mexico is very proud of you, Mike Connor, and we appreciate all of your service. And I want to recognize that you have been a tireless advocate for Indian Country. Some of the most challenging issues at the Department have landed on your plate.

I want to single out your work on the complex issue of oil and gas development around Chaco Canyon. Chaco Canyon, as you know, is a major center of ancient Pueblo culture, rich in archeology. Many of the Tribes of the Southwest have ancient ties to this sacred area. And I appreciate you accompanying me there to Chaco to meet with key stakeholders, and I appreciate your efforts to incorporate the Bureau of Indian Affairs in the resource management planning process.

The Dakota Access Pipeline has shined a light on the importance and necessity of tribal consultation. Tribal consultation must be conducted in the right way and at the right time in order to foster cooperation and avoid conflict. Tribes are sovereign entities; they have the right of significant input on development impacting their land, their resources, their sacred sites. Chaco Canyon is a sacred site for Tribes and it is an important site for New Mexicans and all Americans. Resource development around Chaco deserves careful consideration.

I know you understand and appreciate the need of meaningful consultation, and I would like to take this opportunity also to discuss the Dakota Access Pipeline and the need for meaningful tribal consultation. I appreciate that there is a range of views on the pipeline within this Committee. For my part, I support the Administration's recent action to deny the current route and evaluate other alternatives. The events that have unfolded in North Dakota should serve as a wakeup call to us.

In response to concerns raised by Tribes about the pipeline, the Administration held formal government-to-government consultation with Native Americans throughout the Country and came to Albuquerque, New Mexico. We had a very good session there. If we need congressional action to reform current law, I am all ears on what it is and would love to hear about that. And I look forward to working with my colleagues on this Committee to improve the consultation process.

Finally, I believe the Buy-Back Program has great potential to help Tribes protect cultural and natural resources, and I believe it can help improve services to tribal members.

Since December 2013, the Federal Government has paid approximately \$900 million to individual landowners and has restored in trust the equivalent of nearly \$1.7 million acres to the Tribes. This has major implications for the Tribes in my State, including the Pueblos of Laguna and Zuni, and especially the Navajo Nation, which has a large land base and many private land inholdings that are potential candidates for buy-backs.

I Look forward to hearing from today's witnesses how the Buy-Back Program is working and how we can improve on it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall.
Senator Heitkamp?

**STATEMENT OF HON. HEIDI HEITKAMP,
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman. I feel somewhat obligated to say something nice about Jon Tester, but it is getting harder every day.

I think during the transition I think I tried to make you chairman of the Committee, didn't I? I think I made a motion back in the day to make him chairman. I do apologize; it was a grave error on my part and a failure of judgment to do that.

No, in all seriousness, the Chairman has stated the workings of this Committee pretty well; that we all come together with one common purpose and in consultation with very many witnesses. Senator Tester and I share a lot of commonalities in terms of representing Great Plains Indians, and some of the greatest challenges that we have are with the large land tribes maintaining services, but also making sure that our children have an opportunity for education, an opportunity for betterment. I know that that we will, under new leadership in this Committee, we will continue to advance the cause of Native children and advance the cause of Native people, and understand that we are all together.

I can't go with the member from New Mexico, our Senator from New Mexico, taking credit for Melvin Monette. He is a member of the Turtle Mountain Band of Chippewa and educated in UND in North Dakota, and we are very, very proud of the work that you do every day to advance the cause of Indian education, Melvin. So thank you. I just wanted to make sure that everybody knew he was from North Dakota, and not New Mexico.

The CHAIRMAN. Thank you for that clarification, Senator Heitkamp.

Now is the time to turn to the witnesses. I do want to remind the witnesses your full written testimony will be made a part of the official hearing record today, so please keep your statements to five minutes, so that we may have time for questions. I look forward to hearing your testimony, beginning with Deputy Secretary Connor.

**STATEMENT OF HON. MICHAEL L. CONNOR, DEPUTY
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CONNOR. Mr. Chairman, 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.

I am incredibly proud to have served in an administration that has made great progress in improving the government-to-government relationship with sovereign Indian Nations and significantly improving how the Federal Government fulfills its trust responsibility to Native people.

One aspect of the progress made over the last eight years has been in restoring tribal homelands. The Land Buy-Back Program is a successful part of that legacy and I would like to briefly highlight the Program's accomplishments, its implementation schedule, and the need to work with the Committee and Indian Country on long-term solutions to fractionation.

In 2010, as mentioned, Congress enacted the Claims Resolution Act to ratify and confirm the historic 2009 *Cobell* Settlement

Agreement. The Act provided a \$1.9 billion trust fund for the 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 of the settlement, in 2012, Interior established the Buy-Back Program to work collaboratively across Indian Country with both Tribes and Individuals to realize this historic opportunity. I am pleased to report that the Buy-Back Program is making significant progress in accomplishing its goals.

Since it began making offers in December 2013, the Program has paid more than \$925 million to individual landowners and restored the equivalent of nearly 1.7 million acres of land to Tribal Governments. To date, we are four years into a ten-year program, we have spent 60 percent of the fund for land acquisition activities, and we have only expended 22 percent of the resources available for administrative costs. We are proud of that record.

The Program has relied on significant cooperative efforts both internally within the Department and with Indian Country in achieving these results. It is important to recognize that our government-to-government working relationship with Tribes has led directly to the Program's successes so far. The Program works with Tribes to tailor the implementation strategy at each location, including partnering with Tribes through agreements and sharing mapping and other information with Tribes.

Also, by aligning Program resources with Tribal goals and acquisition priorities at each location, we are upholding and respecting Tribal sovereignty and self-determination in a meaningful way. We have created or increased Tribal ownership in more than 30,000 tracts of land. In fact, we brought Tribal ownership to greater than 50 percent in more than 11,000 tracts, consisting of nearly 1.8 million total acres, through the last fiscal year.

For example, the Program has helped achieve a nearly 300 percent increase in tracts with greater than 50 percent Tribal ownership at the Fort Belknap Reservation of Montana. We are already seeing the impact that the Program is having on Tribal communities, and our 2016 status report highlights initiatives that Tribes are undertaking with consolidated lands, such as economic development, housing, and cultural preservation.

The Program has actively gathered input from Tribal Governments and landowners to determine its implementation schedule, which now includes 105 locations where activities will begin by 2021. These locations represent nearly all eligible landowners' fractional interests and equivalent acres.

Some Tribes on our schedule have expressed concern that the Program's success means that funds would not be available to make offers at their location. I want to allay this concern by emphasizing that the Program is managing resources in a manner that ensures that funds will be available at a minimum for those 105 locations we have already announced.

Let me talk about future work to address fractionation. Approximately 90 million acres of Indian Trust land base were lost in 1934 because of the Federal allotment policies that were initiated in

1887. This is an amount larger than the great State of New Mexico.

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 several at Crow Creek or Navajo, have more than 1,200 landowners. Even with the Program's significant progress to date and the results expected through 2022, fractionation will continue to be an extremely complicated, ongoing challenge in the long term. We estimate that more than 4 million equivalent acres may still exist after the consolidation fund is fully expended in 2022, given that fractionation continues to grow each and every day.

This past spring, Secretary Jewell directed the Program's Oversight Board to pursue an analysis of options to extend the life of the Program so that additional future participants may benefit and so the Program could return to locations where implementation has already occurred. Preliminary ideas for discussion with Indian Country at Interior's next Listening Session include options for potentially continuing the Program and other policy changes.

We are seeking to be transparent by showing our significant results to date in the context of the estimated breath of fractionation in the long-term. We are also looking to pursue much-needed conversations with Congress and with Indian Country about how we can work together for a longer-term solution, and our analysis helps show how important it is to remain focused on addressing fractionation to preserve trust land for future generations.

Thank you for the opportunity. I look forward to your questions. [The prepared statement of Mr. Connor follows:]

PREPARED STATEMENT OF HON. MICHAEL L. CONNOR, DEPUTY SECRETARY, U.S.
DEPARTMENT OF THE INTERIOR

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 ful-

filling 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 im-

plementation 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 longstanding 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.

The CHAIRMAN. Well, thank you very much. Welcome back to the Committee. Thanks for your relationship with us over the past several years. We appreciate you being here to testify today.

Next I would like to turn to the Honorable Floyd Azure, who is Chairman of the Fort Peck, Poplar, Montana. Welcome.

STATEMENT OF HON. FLOYD AZURE, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK RESERVATION

Mr. AZURE. Good afternoon, Senator Barrasso and Senator Tester and Senator Daines. 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 implementation of, the Tribal Nations Land Buy-Back Program. The *Cobell* settlement endorsed by Congress provided a total of \$3.1 billion to address the Individual Indian Money accounting claims, some mismanagement of the underlying trust assets, and designated \$1.9 billion to purchase fractionated lands from individual Indians for restoration back to the Tribes.

The Land Buy-Back Program created a rare opportunity to restore land base through the Department of Interior's purchase of fractionated trust land interests from willing individual Indian owners. The Department of Interior commenced Land Buy-Back efforts by first identifying the 40 Indian Reservations with the highest incidents of fractionation and establishing projected purchase ceilings for each reservation. The Fort Peck Reservation was ranked as the reservation with the sixth highest number of purchasable fractionated interest with an initial purchase ceiling price of \$80,082,500.

In July 2015, the Fort Peck Tribes and the Interior entered into a cooperative agreement to provide landowner education prior to and during implementation of the Program on the Fort Peck Reservation. The Department of Interior began implementation in mid-September 2015 and sent initial offers to the landowners of Fort Peck Reservation lands that included mineral tracts under lease and production.

These initial offer packages were determined in error as the Department of Interior had determined mineral tracts under production were not purchasable due to 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.

The confusion with the initial offers and corrected offers caused skepticism and distrust of the Buy-Back Program. Despite the fact that the Department of Interior and the Tribes held numerous additional outreach sessions to explain the offer packages to the landowners and provide information on the valuation process, only 38.9 percent of the purchasable fractionated interests were acquired. For this reason, we think that another round of offers should go out at Fort Peck so that my Tribe can enjoy the full benefit of what was planned for Fort Peck for the mistake by the Program.

Nevertheless, 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, 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 consoli-

dation efforts are critical to fully restore the Fort Peck Reservation land base. Additionally, these remaining fractionated interests are an ongoing management burden for the Fort Peck Agency Bureau of Indian Affairs.

Thus, the Fort Peck Tribes support the continuation of the Land Buy-Back Program and have suggestions for improving the Program. In terms of the way to improve the Program, we would recommend the Tribes be empowered to craft and carry out the implementation of the Program. We feel the success of the Program was encumbered by the Department of Interior's cumbersome approval process for all activities, including travel. Tribes should be allowed the autonomy to conduct outreach efforts as they deem effective without the burdensome oversight of the Interior.

Second, we would recommend extending the shelf life of the appraisals. Right now, the Department of Interior appraisals for the Buy-Back Program has a shelf life of nine months established by the Department of Interior 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.

Third, we believe there needs to be a greater coordination in consultation with the Tribes in the determination of the purchasable and non-purchasable tracts that would allow the Tribe to develop strategies such as mandatory home site leases for tracts with homes to maximize the number of tracts for purchase.

Fourth, we think that the Program should be expanded to offer acquisition of land that only has one owner. Across Indian Country, some lands are still owned by one owner although these lands have the potential to become fractionated upon the death of the landowner. 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 the Reservation.

Finally, the area where we see the need for greater legislative change is in the Education Scholarship Fund. We understand that the *Cobell* Settlement Scholarship Fund now has approximately \$40 million. However, the Fund has resulted in only \$3 million in actual student scholarships awarded. While the land acquired on the Fort Peck Reservation resulted in a significant contribution to the Fund, there is no assurance that this Fund will provide any educational benefits to our members. The Fort Peck Tribes recommend revising the management of the Scholarship Fund to allow Tribal participation in the use and award of the scholarship funds.

I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Azure follows:]

PREPARED STATEMENT OF HON. FLOYD AZURE, CHAIRMAN, ASSINIBOINE AND SIOUX
TRIBES, FORT PECK RESERVATION

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 6th 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 percent 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 ongoing 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 decisionmaking 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 percent 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 vein, 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.

The CHAIRMAN. Thank you. Thank you very much for your thoughtful testimony. We appreciate you being here.

Our next witness, please.

**STATEMENT OF HON. TERRY TATSEY, VICE-CHAIRMAN,
BLACKFEET NATION**

Mr. TATSEY. Good afternoon, Chairman Barrasso and Committee members. [Greeting in native language.] How are you doing?

First of all, I would like to recognize our Pikunii Woman Warrior, Yellow Bird Woman, the late Elouise Cobell. But also at this time I would like to recognize an uncle of mine that was lost 75 years ago at Pearl Harbor, George Tatsey. Our contribution to the military amongst Tribal Nations is significant, and I want to recognize that.

The CHAIRMAN. George Tatsey. Thank you.

Mr. TATSEY. He lost his life in Pearl Harbor 75 years ago.

The Blackfeet Reservation is in its post-offer phase. One of the concerns that we had to deal with initially was the outreach and education component. We felt if a very well pre-planned effort would have been conducted, it would educate our landowners, those that had the potential to benefit from this. So that was just a concern our people had and our Tribal leadership had. Any time you get a large infusion of money into Indian Country that have limited experience in dealing with investments or purchases, short- or long-term, it is a real high risk.

One of the bright spots that our Tribe benefited from by being the last Tribe in Montana to implement the Program was our Tribal Council and our community took a grassroots initiative to create what we call the Pikunii Money Campaign. It wasn't initially funded in the cooperative agreement; later it was, and that is in the height of its outreach and education right now, so a lot of our people are very aggressively educating the potential beneficiaries on the financial responsibility and opportunity they have with this money.

So it is a campaign that can be used as a template when other Tribes are infused with large money in the future. There is a pre- and post-assessment that is going to come from this, so it is going to be an opportunity to do better things as we move into the future.

Another challenge that was faced for this Program, although we were the last Tribe, is the 45-day window from offer to acceptance by the beneficiaries. So if we could take a look at that as we move forward and ways to address that and extend that, it is something that we feel is very important, and give our people and the programs a better opportunity to make good decisions as they are deciding whether to sell or not to sell their fractionated portions. Some of them have large portions of those fractionated interests.

Moving forward, I think this is something that we really need to take a look at. The appraisal process right now has a nine month shelf life, and as we move forward the consideration is let's take a look at extending that window, if we extend this program and move the program forward with corresponding funding, because one of the things that is not going to end is fractionation, unfortunately, of our properties. We are going to get families that are not going to provide wills, and so that fractionation, those challenges

are going to be a part of reality as we move forward in the future; not to the magnitude that we are experiencing now, but they are still going to be there. So I just wanted to share that with you.

So when we do appraisals with the current process, another thing that we need to consider as we move forward is re-appraisals, because minerals are discovered as we assess properties along recreational mountain-front commercial properties, those property values are going to increase, so really reassessing the appraisal process for some of those Tribes and tribal members that felt their lands and property were undervalued. So that would be a recommendation as we move forward.

And probably last, not least, is when we do things with Indian Country or Tribal Nations, respectively, let's not use the cookie cutter template, one size fits all. Tribes are unique. Tribes are different. And we need to deal with them that way and respect them that way.

Thank you.

[The prepared statement of Mr. Tatsey follows:]

PREPARED STATEMENT OF HON. TERRY TATSEY, VICE-CHAIRMAN, BLACKFEET NATION

Introduction

Oki Tsa nii tahpii; (Hello How are You)

Recognize: Our Pikunii Woman Warrior; Yellow Bird Woman The late Elouise Cobell,

The Land Buy-Back Program, currently in the Post-offer phase on the Blackfeet Indian Reservation in Montana.

1. The initial point of concern is that both the Department and Tribe agree that pre-program individual Financial Literacy training and education was critical.
 2. The Department and Tribe recognize that 45 days is a very short time for individual offers and implement such an important program.
 3. The recommendation is to continue the current program with corresponding funding beyond the agreed upon term, for tribal members that will inherit land in the future.
- A. *Program Benefits (non-contiguous track appraisal):* The Blackfeet Tribe will be the last Tribe in Montana to implement in the Buy-Back Program, we have benefitted from lessons learned from other respective tribal Nations challenges. For example, the Blackfeet Tribe has a substantial amount of tracts that are non-contiguous. A notable benefit to the Blackfeet has been the appraisal of non-contiguous tracks that were otherwise not being appraised during prior implementation of the Buy-Back Program.
- B. *Financial Literacy Education:* Another benefit to the Tribe has been the Department's willingness to change its policy regarding financial literacy education. The Buy-Back Program has created a potential economic benefit to our tribal members, on a reservation with a significantly high unemployment rate.

However, poverty is directly correlated with education, or the lack of. Many individuals receiving offers, some significant, will lack the financial literacy needed to efficiently manage their new fortune, should they accept. When drafting the Cooperative Agreement, the Tribe included a line item for voluntary financial literacy training to land owners. The Department denied the Tribe's request. Although the Tribe's Cooperative Agreement didn't allow a financial education component, the Tribe met with various financial entities in an attempt to provide financial literacy training outside the Cooperative Agreement. The Tribe was successful with partnering with various entities and the "Pikuni Money" campaign was formed, with a mission of providing financial literacy training to eligible land owners. Eventually the Tribe was able to negotiate with the Department and an agreement was made to amend the Cooperative Agreement which would fund a portion of the Pikuni Money campaign as well as extending the length of the Coopera-

tive Agreement. The Tribe appreciates the Department's effort in amending the Agreement. The Tribe is aware that individuals will receive offers in the 6–7 figure range. The Tribe is fully briefed on the unfortunate events that occurred on other reservations, to similarly situated individuals. The Tribe wants to be in a position to better prepare its people for the aftermath of the Buy-Back Program. The Tribe is very optimistic that the financial education component of the Cooperative Agreement will greatly benefit the people who participate.

Potential consequences of the Buy Back Program include:

Length to Accept Offer: The length of time that an offer has to be accepted. This is a once in a life time event throughout Indian Country. Deciding on whether or not to sell your land is a major decision. Because the offer monies have already been allocated by the Department, and the appraisals valid for nine (9) months, it would be in the best interests of the eligible land owners if the offer period could be extended past the 45 days.

Cooperative Agreement: The Cooperative Agreement, Outreach and Post Outreach Process' need to be revisited. The Buy-Back Program is the first of its kind. Many of the components needed to make the Program work, were forged from scratch. The Tribe had no road map to follow when creating its Cooperative Agreement. There was a lack of cooperation on behalf of the Department to assist the Tribe with creating the Agreement. For example, the Tribe asked for assistance with regards to equipment: "how much paper, pens and other supplies should the Tribe contemplate using?" The Tribe also requested copies of other Cooperative Agreements from other tribes who had already participated in the Program. The Department denied the Tribe's requests. This was unfortunate because the Tribe on its own volition was able to reach out to other tribes, and gain valuable insight and information that the Tribe was able to incorporate into its Cooperative Agreement.

Cookie Cutter mentality: The Tribe disagrees with the Department's "cookie-cutter" mentality towards the Tribe throughout Buy-Back Program. The Department based its decisions to allow or not to allow the Tribe to perform certain tasks based on what occurred on other reservations during the Buy-Back Program. The Department's approach is that if something was not successful at tribe A, then it wouldn't be successful at Blackfeet, and vice versa. The Tribe has had to remind the Department that the Blackfeet and each respective tribal nation are different and must be treated as such.

Thank you.

The CHAIRMAN. Thank you so much for your testimony.
Mr. COBELL.

STATEMENT OF TURK COBELL, TREASURER, COBELL BOARD OF TRUSTEES

Mr. COBELL. Good afternoon, Chairman Barrasso, Vice Chairman Tester, and distinguished members of the Committee. My name is Turk Cobell, and I am pleased to be here this afternoon on behalf of the Cobell Board of Trustees.

The CBOT was established under the settlement agreement that established the Cobell Scholarship Program and resolved the long-running class action litigation against the Department of Interior and other Federal defendants known as Elouise Pepion Cobell v. Jewell. The *Cobell* Settlement was authorized by Congress on December 8, 2010, six years ago tomorrow, and was granted final approval by the Court on November 24, 2012.

The role of the CBOT under the *Cobell* Settlement is to serve as custodian of the scholarship funds, to govern the Cobell Scholarship Program, and to report periodically to the Secretary of Interior and Lead Plaintiffs on scholarship activities.

As I stated, I am Turk Cobell, a member of the Blackfeet Nation, the son of lead plaintiff, Elouise Cobell, and I am an entrepreneur and also serve as the Treasurer of the CBOT. Other members of the CBOT include Alex Pearl, a citizen of the Chickasaw Nation of

Oklahoma, who is an Assistant Professor of Law at Texas Tech University School of Law and Chair of the CBOT; Jeani O'Brien, a member of the White Earth Band of the Minnesota Chippewa Tribe, who is a Professor at the University of Minnesota; Pam Agoyo, a member of the Pueblo of Ohkay Owingeh, Pueblo of Cochiti, and Pueblo of Kewa, who is also the Director of American Indian Student Services and Special Advisor to the President at the University of New Mexico; and Dorothy Nason, a member of the Leech Lake Band of the Minnesota Chippewa Tribe, who is a Professor at the University of British Columbia. I will also mention that Elouise Cobell, the principal plaintiff in the litigation and my mother that led to creation of the Scholarship Program, was honored two weeks ago by receiving the Presidential Medal of Freedom.

I am pleased to report that the Cobell Scholarship Program is now well underway and is working extremely well. In fact, in the 16 months since CBOT first began authorizing scholarship awards, over 2,100 hundred individual Cobell scholarships have been awarded to over 1,100 Native American and Alaska Native students. The scholarship awards are \$5,000 per semester for undergraduates and \$10,000 per semester for graduate and doctoral students.

The Cobell scholarship awards to date total more \$5.25 million, and the CBOT has authorized an additional \$500,000 for scholarships for the summer term 2017. Thus, the scholarships authorized to date total more than \$5.75 million. Moreover, the quality of the applicants is remarkable. The combined average GPA for students who received scholarships for the current academic year is 3.46.

There is a huge unmet need for these scholarships in the Native American community. Our scholarship administrator, Indigenous Education, Inc. received nearly 3,600 scholarship applications for the current academic year, but the funds available were only sufficient to provide scholarships to 600 of those students.

There is some good news, however. The Scholarship Program will continue to receive additional funds related to the Land Consolidation Program up to a cap of \$60 million. In addition, the CBOT has invested the funds received conservatively, principally in index funds managed by Vanguard, but the returns to date have been excellent and have provided more funds for scholarships. The availability of additional funding and prudent asset management are both critical because CBOT is required to operate the Cobell Scholarship Program as a perpetual fund.

The CBOT did encounter several initial hurdles in administering the Cobell Scholarship Program. The organization originally selected, before the CBOT was formed, to handle applications and to administer scholarships resigned before the application process even began. The next organization was selected and was overwhelmed by the number of applicants and was not able to handle scholarship administration in a timely or satisfactory manner.

Fortunately, CBOT replaced that organization earlier this year with IEI, led by Melvin Monette, who is also testifying today, and IEI has done a superb job in administering the Scholarship Program. Moreover, in conjunction with replacing the prior administrator, CBOT and IEI jointly proposed that the administrative fee

be cut in half, from 6 percent annum to 3 percent annum, and that has been done.

In getting the Cobell Scholarship Program operational and, in particular, in working through the changes in administrators, the CBOT has had the full support of the Lead Plaintiffs, through their counsel, Bill Dorris, of Kilpatrick Townsend, and the Department of Interior. At Interior, the single most critical person has been the Solicitor, Hilary Tompkins, who has been extraordinarily helpful to the Cobell Scholarship Fund at every turn.

Thank you, Mr. Chairman. That completes my testimony, and I would be pleased to answer any questions the Committee may have [The prepared statement of Mr. Cobell follows:]

PREPARED STATEMENT OF TURK COBELL, TREASURER, COBELL BOARD OF TRUSTEES

Chairman Barasso, Vice Chairman Tester, and distinguished Members of the Committee, my name is Turk Cobell and I am pleased to appear today on behalf of the Cobell Board of Trustees (CBOT). The CBOT was established under the settlement agreement (the *Cobell* Settlement) that established the Cobell Scholarship Program and resolved the long-running class action litigation against the Department of Interior and other federal defendants known as *Elouise Pepion Cobell, et al. v. Jewell* (*Cobell* Litigation). The *Cobell* Settlement was authorized by Congress on December 8, 2010—six years ago tomorrow—and was granted final approval by the Court on November 24, 2012.

The role of the CBOT under the *Cobell* Settlement is to serve as custodian of the scholarship funds, to govern the Cobell Scholarship Program and to report periodically to the Secretary of Interior and the Lead Plaintiffs on the scholarship activities. As stated, I am Turk Cobell (a member of the Blackfeet Nation), the son of the lead plaintiff, Elouise Cobell, and I am an entrepreneur and also serve as the Treasurer of the CBOT. Other members of the CBOT include Alex Pearl, a citizen of the Chickasaw Nation of Oklahoma, who is an Assistant Professor of Law at Texas Tech University School of Law and Chair of the CBOT; Jeani O'Brien, a member of White Earth Band of the Minnesota Chippewa Tribe, who is a Professor at the University of Minnesota; Pam Agoyo, a member of the Pueblo of Ohkay Owingeh, Pueblo of Cochiti, and Pueblo of Kewa, who is the Director of American Indian Student Services and Special Advisor to the President at the University of New Mexico; and Dorothy "Dory" Nason, a member of the Leech Lake Band of the Minnesota Chippewa Tribe, who is a Professor at the University of British Columbia. I should also mention that Elouise Cobell, the principal plaintiff in the litigation that led to creation of the Cobell Scholarship Program, was honored, posthumously, two weeks by being awarded the Presidential Medal of Freedom.

I am pleased to report that the Cobell Scholarship Program is now well underway and is working extremely well. In fact, in the sixteen months since CBOT first began authorizing scholarship awards, nearly 1800 hundred individual Cobell scholarships have been awarded to almost 1000 Native American students. The scholarship awards are \$5,000 per semester for undergraduates and \$10,000 per semester for graduate and doctoral students. The Cobell scholarship awards to date total more \$5.25 million, and the CBOT has authorized an additional \$500,000 for scholarships for the Summer Term 2017. Thus, the scholarships authorized to date total more than \$5.75 million. Moreover, the quality of the applicants is remarkable. The combined average GPA for students who received scholarships for the current academic year is 3.46.

There is a huge unmet need for these scholarships in the Native American community. Our scholarship administrator, Indigenous Education, Inc. (IEI), received nearly 3600 scholarship applications for the current academic year, but the funds available were only sufficient to provide scholarships to 600 students. There is some good news, however. The Scholarship Program will continue to receive additional funds related to the Land Consolidation Program up to a cap of \$60 million. In addition, the CBOT has invested the funds received conservatively, principally in index funds managed by Vanguard, but the returns to date have been excellent and have provided more funds for scholarships. The availability of additional funding and prudent asset management are both critical because CBOT is required to operate Cobell Scholarship Program as a perpetual fund.

The CBOT did encounter several initial hurdles in administering the Cobell Scholarship Program. The organization originally selected—before the CBOT was

formed—to handle applications and to administer scholarships resigned before the application process even began. The next organization selected was overwhelmed by the number of applications and was not able to handle scholarship administration in a timely or satisfactory manner. Fortunately, CBOT replaced that organization earlier this year with IEI, led by Melvin Monette-Barajas, who is also testifying today, and IEI has done a superb job in administering the Scholarship Program. Moreover, in conjunction with replacing the prior administrator, CBOT and IEI jointly proposed that the administrative fee be cut in half, from 6 percent per annum to 3 percent per annum, and that has been done.

In getting the Cobell Scholarship Program operational and, in particular, in working through the changes in administrators, the CBOT has had the full support of the Lead Plaintiffs, through their counsel Bill Dorris of Kilpatrick Townsend, and the Department of Interior. At Interior, the single most critical person has been the Solicitor, Hilary Tompkins, who has been extraordinarily helpful to the Cobell Scholarship Fund at every turn.

Thank you, Mr. Chairman. That completes my testimony, and I would be pleased to answer any questions that the Committee may have.

The CHAIRMAN. Thank you very much, Mr. Cobell, for sharing your testimony with the Committee.

Mr. Monette?

**STATEMENT OF MELVIN MONETTE-BARAJAS, PRESIDENT/
EXECUTIVE DIRECTOR, INDIGENOUS EDUCATION, INC.**

Mr. MONETTE. Good afternoon, Chairman Barrasso, Vice Chairman Tester, members of the Committee. My name is Melvin Monette-Barajas, and I am an enrolled member of the Turtle Mountain Band of Chippewa Indians in North Dakota and operate the Indigenous Education, Incorporated in Albuquerque, New Mexico.

IEI is the approved administrator for the Cobell Scholarship Program authorized by the settlement. Indigenous Education, Inc. welcomes this opportunity to assist the Committee in the oversight of this portion of the *Cobell* settlement. I will quickly summarize my written testimony and understand that it will be entered into the congressional record.

As stated, Indigenous Education is a nonprofit scholarship administrator created for the expressed purposes of administering the Cobell Scholarship Program following the resignations of two previous organizations. The opportunity to create an organization to give the Cobell Scholarship Program a single focus necessary to design the Scholarship Program and services that focus on students, Tribes, institutions, and the communities was born through the aforementioned resignations.

The Cobell Board of Trustees has authorized the organization and the predecessor to award more than \$4.25 million to nearly 1,000 members of 138 U.S. federally recognized Tribes attending 316 nonprofit public and private institutions of higher education as they seek full-time degrees, vocational education, undergraduate education, graduate and professional education. In addition, the CBOT has authorized an additional \$500,000 for the summer of 2017, in which the organization will begin accepting applications in the early part of 2017.

As Mr. Cobell stated, we had over 3,000 applicants, almost 3,500 applicants. Of those applicants, we were able to fund 640 students, with a combined average GPA of 3.46. So obviously we are looking for and funding highly qualified students, of which all 3,000 were highly qualified, making our job extremely difficult, but we were

able to provide those dollars to those students; and we have a number of testimonies from our students on our Web site.

The organization also maintains a waiting list of students who we were not able to fund, so, as students and their institutions return funds to us, we make sure that the allocated dollars are returned to the community and to those students, and we will continue doing that through the summer of 2017. We want to make sure that all the allocated dollars are used, and not sitting in a bank somewhere.

The Scholars group that IEI administered in this fall term, 640 students attending 249 institutions, are enrolled in 116 U.S. federally-recognized Tribes and studying 35 different major areas.

The combined scholarship organizations have funded 972 students, 846 of which were undergraduate and 126 of which are graduate students, receiving \$3.7 million in total. Another \$1.5 million staff is currently, as we sit here today, administering for the spring term starting in January, as well as another \$500,000, as I stated, for summer.

These students claim residence in 41 States, attend 316 institutions in 44 States, and are enrolled in 133 Tribes whose headquarters are in 20 States. Collectively, 208 of these students attend 24 of the United States' Tribal colleges and universities which are located in 11 States. Six of these students were graduate students studying at Tribal colleges and universities, leaving 202 graduate students at Tribal colleges and universities.

I have included in my testimony a short list of scholarships provided by State. The top 10 States are listed there in my written testimony, with Montana, as Mr. Tester recognized. One hundred eighteen students are residents of the State of Montana, to which \$462,613 was provided to those students. As you see, it goes down by the number of students provided with New Mexico, South Dakota, North Dakota, Arizona, Oklahoma, California, Washington, Minnesota, and Wisconsin mentioned. As you can also notice, we are doing a pretty good job of outreach and coverage to students in what is known as Indian Country, and we are very proud of that work.

We are proud of what we have accomplished to date and look forward to continuing the essential work of the Cobell Scholarship Program, even after the Land Buy-Back Program has concluded, to provide improved educational opportunities for American Indian and Alaska Native students, and to enable those students to improve their own communities.

Thank you, Mr. Chairman. That completes my testimony, and I would be happy to answer any questions.

[The prepared statement of Mr. Monette follows:]

PREPARED STATEMENT OF MELVIN MONETTE-BARAJAS, PRESIDENT/EXECUTIVE
DIRECTOR, INDIGENOUS EDUCATION, INC.

Chairman Barasso, Vice Chairman Tester, and distinguished Members of the Committee, my name is Melvin Monette-Barajas, I am an enrolled member of the Turtle Mountain Band of Chippewa Indians and I am pleased to appear today representing Indigenous Education, Incorporated (the Organization), the approved administrator for the Cobell Scholarship Program authorized by Congress in *Elouise Pepion Cobell, et al. v. Jewell* (the Cobell Settlement). Indigenous Education, Inc.

welcomes the opportunity to assist this committee in its oversight of the *Cobell* Settlement.

Indigenous Education is a nonprofit scholarship administrator created for the express purposes of administering the Cobell Scholarship Program, following the resignation of two previous organizations. The opportunity to create an organization to give the Cobell Scholarship Program the single-focus necessary to design a scholarship program that focused on students, tribes, institutions and community was born through the aforementioned resignations. Combined, the Organization's President and Executive Director, and the Director of Scholarship Programs have over 50 years of scholarship and student services experience focused on American Indian and Alaska Native students in higher education. The Organization employs five (5) full-time, one (1) part-time and two (2) seasonal-temporary employees in Albuquerque, New Mexico where scholarship processes are conducted via Internet, postal service and telephone as necessary. To date, The Cobell Board of Trustees (CBOT) has authorized and the Organization and a predecessor have awarded more than \$5.25 Million to nearly 1,000 members of 138 US federally-recognized tribes attending 316 nonprofit public and private institutions of higher education as full-time and degree-seeking students pursuing vocational, undergraduate and graduate/professional degrees. In addition, the CBOT has authorized an additional \$500,000 for Summer 2017 term and the Organization will begin accepting applications for the scholarships within the next few months.

I am the Executive Director of Indigenous Education, Inc., and I am both honored and privileged to manage the Cobell Scholarship Program to carry out the wishes of the plaintiffs and the late Elouise Pepion Cobell to provide resources for access to higher education for Native people. I bring to the Organization work in institutions of higher education at the Tribal College level, regional and Research 1 institutions, state government (MN) and nonprofit management, as well as board membership as a scholarship advisor to several organizations. As a personal commitment, my advocacy comes from my own experiences, or lack of experiences, with funding for higher education. I am proud of the work that Indigenous Education, Inc. has accomplished in our first year in existence.

We understand and appreciate the financial needs associated with higher education for American Indian and Alaska Native students who have waited patiently for this scholarship program to be made available to them. We also acknowledge that the incentive to sell shares in Trust land to grow the scholarship corpus carries with it an unintended expectation that the "selling" individual, family or tribe will receive priority for scholarship assistance. To assist in the administration of scholarships, the Organization requests information from applicants that will assist staff in identifying these individuals; however, in understanding the financial aid process and requiring a minimum eligibility for selection, along with deadlines for quality management, not all "sellers" have received or will receive a scholarship without an increase in available scholarship funds. We have heard from tribes, families, and students and we are addressing their concerns while remaining aligned with industry standards and practices.

The Cobell Scholarship Program and Indigenous Education, Inc. as the Administrator

Elouise Cobell and a group of advisors advocated for the inclusion of a scholarship program to assist Native students to access and complete higher education at every level. While it may not have been apparent at the time, we now recognize that the Cobell Scholarship Program may serve as the principal perpetual legacy of the Settlement. This carries with it an awesome responsibility to continuously listen to Native students and communities and remain flexible in our administration of the program.

Having assumed the administration two-thirds of the way through an academic year, the Organization was charged with closing the year for first-year funded students, providing summer term funds to returning and new students, opening a new application and process for year two (2) of the program, designing all materials, and distributing all associated outreach and documents. It was the epitome of the proverbial "hit the ground running" for the organization. At this time, we are completing a review and revision of all processes associated with the scholarship program and in the coming days, will be launching the application process for year three (3) of the Cobell Scholarship Program—the Summer 2017 term and the 2017–2018 Academic Year.

In performing its functions, Indigenous Education, Inc. operates at the direction of its Board of Directors—Melvin E Monette-Barajas (Turtle Mountain Band of Chippewa Indians), Kelly Fayard (Poarch Creek Band of Indians), Clint Carroll (Cherokee Nation) and under the direction and oversight of the Cobell Board of

Trustees. The Organization contracts with Academic Works, the leader in complete scholarship management, in utilizing its platform for applicants and staff. We also contract our website development and maintenance, technology support as needed, and all accounting services.

Indigenous Education, Inc. and the Cobell Scholarship Program Description

The Cobell Board of Trustees sets the minimum eligibility criteria. The eligibility criteria are noted below.

To be considered eligible for the Cobell Scholarship Program, Applicants must be:

- Attending or planning to attend a non-profit public or private institution of higher education that is nationally, regionally and industry accredited; and,
- Able to submit a completed application of self-reported information by the annual stated deadline; and,
- Able to demonstrate academic excellence through submission of a current unofficial transcript and through submission of an Academic Reference; and,
- Able to demonstrate engagement in community as demonstrated through submission of a Community Reference; and,
- Seeking to obtain one of the following:
 - Vocational diploma, certification, certificate or AAS degree; or,
 - Undergraduate AA, AS, BA, BS or Post-baccalaureate degree; or,
 - Master’s, Doctoral or Professional degree.
 - Post-doctoral work is considered on an individual basis.

Finalists are selected from a pool of all completed applications by external reviewers and upon selection must be able to demonstrate that they are indeed:

- A degree-seeking students attending a non-profit public or private institution; and,
- Enrolled full-time in academic study through submission of a course registration; and,
- Able to demonstrate financial need by subtracting all known/existing resources from the full cost of attendance with an end result in a positive “unmet need” per the institution’s office of financial aid submission of a Financial Need Analysis; and,
- Able to demonstrate US federally-recognized tribal enrollment through the tribe’s Office of Tribal Enrollment submission of a Tribal Enrollment Verification.

Awarded scholars are those students who meet all stated deadlines for the post-Finalist status. This group of “Scholars” and “Fellows” will receive multiple distributions throughout the regular academic year depending on the institution’s academic calendar. Several of these students are considered “Honorary” because they meet all eligibility and deadlines but have no demonstrated need. Honorary Scholars remain on distribution lists, receive all program updates and can access any student service provided by the organization and funds can be made available to them if their financial situation changes.

Indigenous Education, Inc. and the AY 16/17 Award Data

For the Inaugural Summer Scholarship Program 2016 term, 138 offers were made with 37 of those returning scholars from the 2015–2016 academic year. Recognizing the requirement for 80 percent of the available scholarship funds to be awarded to undergraduate students and the remaining 20 percent to graduate students, 101 undergraduates were awarded and 37 graduate students were awarded totaling \$366,318. The Organization funded students with an overall grade point average (GPA) of 3.16 for the Summer term.

Summer Term 2016 - Grade Point Average by Education Level						
Level	<2.9	3.0 – 3.49	3.5 – 4.0	Blanks	Average	Total
Freshmen	13	1	4	0	1.72	18
Sophomore	11	8	12	0	3.22	31
Junior	7	9	11	0	3.09	27
Senior	15	7	3	0	2.85	25
Masters	4	5	21	1 – PSI does not give GPA	3.46	31
Professional	0	1	1	0	3.44	2
Doctoral	0	0	4	0	3.92	4
Total	50	31	56	1	3.16	138

The Organization's first regular academic year process is 2016/2017 with Summer 2017 yet to be administered. Applicants were required to submit an online General Application (demographic information), a Tribal Enrollment Form and a Financial Need Analysis to have a complete package on file. The latter two forms will be requested only from Finalists in the future. All information to complete an application package will be self-reported in the future with only Finalists requiring verification.

The Organization received 5540 visitors to the OASIS system of which 582 students were funded. These 582 scholars had a positive unmet need reported by their office of financial aid. Another 58 students are considered "Honorary Scholars" due to no or negative unmet need reported by the financial aid office, and are invited to participate in all scholarship recipient programs. This group of 640 Scholars has a combined average GPA of 3.833 as noted on the following page.

Academic Year 2016 – 2017 GPA by Education Level					
Status	<2.9	3.0 – 3.49	3.5 – 4.0	Average	Total
Freshmen	3	73	98	3.6	174
Sophomore	1	70	82	3.5	153
Junior	1	72	66	3.47	139
Senior	4	52	39	3.42	95
Masters	0	4	41	3.8	45
Professional	0	4	8	3.69	12
Doctoral	0	3	19	3.82	22
Total The	9	278	353	3.42	640

The Organization maintains waiting lists of students who were fully eligible but where all available funds had been exhausted these students can receive awards from returned funds, if any become available.

The Scholars group of 640 students attend 249 institutions, are enrolled in 116 US federally-recognized tribes and study in 35 different major areas. The selected scholars are a diverse group.

Combined Scholarship Data

To date, the Cobell Scholarship Program has provided funded 972 students—846 undergraduate and 126 graduate students. They have received \$3,719,667.58 in scholarship awards and another \$1,532,748.42 is allocated for Winter quarter and Spring terms and \$500,000 has been authorized for Summer 2017 totaling \$5.75 million in scholarship allocations. These students claim residence in 41 states, attend 316 institutions in 44 states and England (IE will fund students attending for-

eign institutions so long as they meet all other criteria), and are enrolled in 133 tribes in 20 states. Collectively, 208 students attend(ed) 24 Tribal Colleges and Universities in 11 states; 6 are/were Graduate students, leaving 202 Undergraduate students.

Level of Study	Graduate	Undergraduate	Grand Totals
Number of Scholars	126	846	972
Academic Term	Total Individual Scholarships	Total Individual Scholarships	Total Scholarship Dollars
Sum of Semester-Fall 2015 (previous)	41	288	\$887,294.00
Sum of Semester-Spring 2016 (prev)	37	271	\$830,332.00
Sum of Quarter-Fall 2015 (previous)	1	34	\$62,234.00
Sum of Quarter-Winter 2016 (prev)	1	34	\$55,134.00
Sum of Quarter-Spring 2016 (prev)	1	20	\$31,796.00
Sum of Summer Term 2016 (IEI)	27	106	\$366,318.00
Sum of Semester-Fall 2016 Term (IEI)	74	507	\$1,486,559.00
Sum of Spring 2017 (IEI)	76	522	\$1,532,748.00
Sum of Summer Term 2017 - *Authorized	*20	*160	\$500,000.00
Sum of TOTAL	278 Individual Scholarships	1782 Individual Scholarships	\$5,752,415.00, for 2060 Individual Scholarships

The number of scholars receiving funding through Fall 2016 by state of residency for the top ten states includes:

State of Residency	Graduate Student Count	Graduate Student Awards	Undergrad Student Count	Undergrad Student Awards	Total Student Count	Total Student Awards
MT	8	\$61,664.00	110	\$400,949.22	118	\$462,613.22
NM	12	\$86,588.33	95	\$313,515.51	107	\$400,103.84
SD	5	\$31,318.00	98	\$366,435.67	103	\$397,753.67
ND	6	\$36,683.00	88	\$324,163.50	94	\$360,846.50
AZ	19	\$93,545.33	65	\$224,984.17	84	\$318,529.50
OK	9	\$51,982.50	74	\$277,384.96	83	\$329,367.46
CA	12	\$54,593.16	56	\$197,763.67	68	\$252,356.83
WA	16	\$91,132.66	50	\$150,260.70	66	\$241,393.36
MN	4	\$15,903.00	32	\$138,364.50	36	\$154,267.50
WI	1	\$5,000.00	25	\$81,054.00	26	\$86,054.00

State of Residency Graduate Student Count Graduate Student Awards Undergrad Student Count Undergrad Student Awards Total Student Count Total Student Awards

Conclusion

We are proud of what we have accomplished to date and look forward to continuing the essential work of the Cobell Scholarship Program even after the Land Buyback Program has concluded to provide improved educational opportunities for American Indian and Alaska Native students and to enable those students to then improve their own communities.

Thank you, Mr. Chairman. That completes my testimony, and I would be happy to answer questions from the Committee.

The CHAIRMAN. Thank you very much, Mr. Monette. We appreciate your taking time with the Committee today.

Senator DAINES?

Senator DAINES. Thank you, Mr. Chairman.

Chairman Azure, the Land Buy-Back Program has already been implemented on the Fort Peck Reservation as a result of the consolidation, I believe, of about 40 percent of the Reservation's purchasable fractional interests. How has your community benefitted economically from the Program?

Mr. AZURE. Basically, the Tribes have leased out the majority of the land that we did get from the buy-back, and it generated almost \$1 million worth of revenue to the Tribes.

Senator DAINES. How much revenue was that?

Mr. AZURE. Almost \$1 million of revenue to the Tribes, which we utilized for social services programs within the Tribes.

Senator DAINES. Vice Chairman Tatsey, could you share how you expect the Blackfeet will also benefit economically from having a program implemented and having the fractional interests consolidated?

Mr. TATSEY. Well, the potential for purchase for our Reservation is over 600,000 acres. Of that, we don't know what the real acquisition is going to be; we are anticipating 40 to 50 percent. But based on those numbers, we anticipate it is going to be over \$1 million of revenue generated for our Tribe to support some of our social, educational, and economic needs. A benefit to us as the Tribe looks at some of the long-term planning and land use planning for our Tribe, the Tribal governance will have opportunity to do some good long-term land use planning once we have ownership and have some say in what can go on with those properties.

Senator DAINES. Vice Chairman Tatsey, I stepped out because I went to a press conference that we did as part of the Senate Opportunity Coalition to address the issue of poverty. In fact, I cited unemployment rates on the Blackfeet Reservation as an example of the challenges we face in Montana which lead to poverty. The numbers were staggering. Unemployment rates in excess of 50 percent on the Blackfeet Reservation.

Mr. TATSEY. Yes. That is the conservative number. When we are looking at this time of the year, when seasonal employment is not available, we are talking 70 percent.

Senator DAINES. Seventy percent.

Mr. TATSEY. Yes. And that could vary, but when we get towards the wintertime of the year and seasonal employment slows down, it can get that high, but average around 50 percent.

Senator DAINES. I think that needs to be continued to be talked about.

Mr. TATSEY. Yes, it does.

Senator DAINES. In fact, Senator Scott, who is leading the Coalition, he reiterated these numbers. Sometimes we think poverty is related to one part of the Country or perhaps in the inner cities, and it is right in the heart of a State like Montana.

Chairman Azure, I would like to get some perspective from you around what aspects of the Program you believe are in need of improvement, what we could do here to improve or to change, make them better. Here you have a chance to share your on-the-ground

experience with this Committee, and we would appreciate your thoughts.

Mr. AZURE. One of my main concerns is if we are going to do land buy-back for the Reservations, I think we should be allowed to buy back fee land, which is wide open out there; and there is a lot of it on my Reservation. My Reservation is pretty much checkerboard, it is 50-50 with trust land and fee land.

Another thing I would like to see is I would like to see the Land Buy-Back extended on our Reservation because we have numerous tracts that are still open that are fractionated and we have numerous people coming in, after the fact, trying to come in and sell their land to us; and what happened is the majority of them got their letters and everything, but they were wrong when they first sent them in. The information that they gave us that we had to give to them was wrong, so they basically kind of held back because they thought they were getting ripped off. So then after everybody started getting their money, they put their application and it was denied because it was a late date, it was after the fact. I think that would be greatly improved.

And also for the appraisals, nine-month life on the appraisals, if we can extend the life of the appraisals like they do in the real world, I think that we would be better off. I think if we would basically get us treated basically like the real world in this, it would help us quite a bit.

Senator DAINES. I thank you for those specific pieces of feedback.

Vice Chairman Tatsey, in the remaining time I have, which is not much, you were nodding your head in agreement. Any other thoughts you have as well?

Mr. TATSEY. Just want to reiterate what Chairman Azure has stated; it is something that we discussed and Chairman Azure covered them very well. So I just want to expound on what he said. It is basically as we move forward, we are going to be dealing with the situations. Being last to implement the Program has been a benefit to us, but still we see the challenges of outreach and contacts and proper applications and all those types of things that probably were a big challenge for, I am sure, some of the initial Tribes that implemented the Program.

Senator DAINES. Thank you for your thoughtful comments.

The CHAIRMAN. Thank you, Senator Daines.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

First, I want to thank Mike Connor for his service. When I first came here, Mike was working for Senator Bingaman and doing a fine job with him, and applied for the job you have now, and I supported you in that effort and I have not been sorry one day. You have been incredible in the position. I serve on Appropriations and I am upset about the fact that we don't have the ability to do projects or the appropriations process to direct dollars, but I will tell you that you are one of the people that gets out and you get to see the projects, and you make good recommendations even though you are in the Executive Branch. So we thank you for that.

I have a few questions now, Mike. The first one is there has been about \$900 million thus far sent out to individual landowners. That is money that is sent out to individual landowners. Do you have

any dollar figure on admin costs to get that money out? And if you do, could you tell me how much went to the Department of Interior and how much went to Tribes?

Mr. CONNOR. I don't have that figure broken out, the administrative costs between the Tribes and the Department itself. I can tell you I alluded to the fact in my opening statement, but we can get you that information for the record.

Senator TESTER. That would be good if you could. I would just like to know.

Mr. CONNOR. Can I just say, we are 22 percent of the administrative costs. The legislation allowed for \$285 million to be used for administrative costs. We have expended 22 percent of that, notwithstanding the fact that we are 40 percent into the timeframe for the Program and we have expended 60 percent of the money for acquisition purposes.

Senator TESTER. Okay, so you have expended 60 percent of the money that is allocated for the Program, so you have a little, well, a fair amount less than \$900 million that is going to go out, and then the Program is done?

Mr. CONNOR. We anticipate the Program is going to be done by the timeframe contemplated in the legislation 2022, which is remarkable that I can sit there and say that with that confidence right now because two years ago, when I testified before this Committee, one of the concerns was could we run the program in an efficient enough way to ensure that we didn't return any money to the Treasury. We are not going to return any money to the Treasury, and we will expend it by the timeframe set in 2022.

That is why we have taken the opportunity in our latest status report to start looking beyond what is left to do, what are the ongoing problems associated with fractionation; what is the magnitude of the problem. We have a lot more information now than we did in 2009, when the legislation was being developed, and we know the magnitude of the remaining problem and the need to continue on with a program such as we've got in place right now if we are going to make long-term meaningful progress and create opportunities for Tribes from an economic development, cultural protection, essential services program.

Senator TESTER. So going to what Chairman Azure asked for an extension of the Program, do you see that as being possible, then?

Mr. CONNOR. It will take action by Congress. What we have tried to do with respect to - there is certainly going to be a need if we are going to, because otherwise the great progress that we have made over the course of the last four years, as demonstrated by the charts that were up earlier.

Senator TESTER. But you will not have the capability to extend it, it will have to be done by Congress?

Mr. CONNOR. That is correct.

Senator TESTER. Okay. What about extending the life of appraisals, is that something you could do? Because that is a fairly good point.

Mr. CONNOR. It is, but one of the overarching goals is to ensure that we acquire these interests at fair market value. So that is the reason for the nine month timeframe. We have, and I think we need to continue to have a dialogue with respect to Indian Country

to ensure that at the end of that nine months, if there are still outstanding offers, we don't immediately start back from ground zero; we can look at the market conditions, we can make judgments about whether there is ongoing validity to those appraisals, without going back and starting anew.

Senator TESTER. Okay. I am going to bounce it around a little bit; I am going to go to the other end of the table and either Turk or Mel, either one of you guys can answer these questions.

This Scholarship Program is going to be an ongoing scholarship program, so you are going to be working off of interests, correct?

Mr. COBELL. I think that is correct, Senator, yes.

Senator TESTER. And is that what you are doing now?

Mr. COBELL. Yes. We are doing that and a little more. What is a little unique about the existing scholarship program and format is that we receive quarterly deposits via the Land Buy-Back Program, and those deposits or transfers vary from \$100,000 to billions of dollars. At this point, typically you would look at the returns you are getting from your fund and then use those returns within a point or two and distribute those to scholarships. What is difficult for us now is to try and estimate what that return is going to be because our deposits are so sporadic.

Senator TESTER. I got you. And is it the administrator's job to invest the dollars?

Mr. COBELL. No, that is the Cobell Board of Trustees, as the custodian of the funds, to invest those dollars.

Senator TESTER. Okay. And are there any colleges that are off limits? Now let me give you an example. You have two-year schools, you have four-year schools, you have some for-profits that people have some problems with. Is it open to everything?

Mr. MONETTE. For-profit institutions are not eligible to receive our funds.

Senator TESTER. Okay. And we have heard some examples where a person will come in with a scholarship and the university will decrease the kind of help that they were giving that student. Are you seeing that or is that just a rumor? If you are, is there anything you can do about it?

Mr. MONETTE. It does happen. Unfortunately, we follow Federal student aid guidelines, so a student receives a full cost of attendance and then our check shows up, they either need to return a portion or all of it to us because of Federal student aid guidelines. One of the things we cannot do is replace the expected family contribution.

Senator TESTER. Yes.

Mr. MONETTE. So that tends to be the largest problem we see with our students, is that EFC.

Senator TESTER. Okay, sounds good. Well, thank you.

I am going to go over to Floyd here for a second. Can you tell me what outreach programs work the best for you in Fort Peck and could they be improved upon to let people know?

Mr. AZURE. Basically, I haven't seen any outreach programs, but in talking to Mr. Monette and Mr. Cobell, they said that there are 29 students from the Reservation that got that money. The ones I know of got a 638 contract, educational contract that we provide scholarships for our students, and we have 42 of those students

still left on my Reservation without a scholarship. They are on a waiting list because we expended all of our 638 dollars already.

Senator TESTER. Okay. Now I am talking about the Land Buy-Back Program as far as outreach.

Mr. AZURE. Land Buy-Back, that was on a previous administration.

Senator TESTER. No, that is okay. I just wondered are there outreach program that you know of that have worked well.

Mr. AZURE. Yes.

Senator TESTER. And maybe ones that haven't worked so well?

Mr. AZURE. I think we pretty much replaced the ones that didn't work so well, but that was after the fact.

Senator TESTER. So you are happy with what you have going now?

Mr. AZURE. We are working very well, but the first go-round everybody kind of got skeptical of what was going on and they pulled back from their land sales.

Senator TESTER. All right.

Mr. AZURE. After we corrected it we got a lot of people who have come back, but there is a lot of them that didn't.

Senator TESTER. Do you see an opportunity for more Tribal consultation with the Department? And, if you do see that, what would that look like?

Mr. AZURE. I think that what we are going to have to do is we are going to have to work with the people better, because they are very skeptical about what the Federal Government does, and I think that we should have some people come in. I would have to just go through it by finger and show them.

Senator TESTER. There is a little history there.

Terry, you talked about purchase offers should be made available beyond 45 days. You get to give your opinion. How long do you think they should be out there for?

Mr. TATSEY. I think one of the guiding principles behind all this is just a good outreach and education program to begin with, Senator Tester.

Senator TESTER. Okay.

Mr. TATSEY. If you did that like we have done that with the Pikunii Money Campaign, you educate people, you let them know about opportunity and let them know about the potential things that can happen if they retain their property, if they sell their property, if that had been initiated, that 45-day window may have worked. But because they are doing it in conjunction with offers, I would say at least a 60-day window would probably be fairly adequate, but not meet all the needs.

Senator TESTER. And how was that time decided, that 45? Was that a negotiated agreement or was that an agreement that the Department came up with? Mike, can you answer that?

Mr. CONNOR. The 45-day time period for offers was really set up as part of the initial program parameters to ensure that we were moving the program effectively and efficiently through the process.

Senator TESTER. And you get pressure out of this end to make sure things move. Did that come out of consultation with the Tribes?

Mr. CONNOR. We had consultations when we initially set up the Program. I think that was the rub of us trying to move forward, where Tribes were trying to establish some longer timeframes. I would say it works better now as we do improved outreaches, we have done lessons learned, than it did earlier.

Senator TESTER. Okay. Well, thank you.

And I just want to close and thank the Chairman for being so flexible on the time. I want to thank you all for the work you do and I want to wish you all a very happy holiday season. Thank you for being here.

The CHAIRMAN. Thank you, Senator Tester.

Secretary Connor, in 2009 this Committee held an oversight hearing on the then recent court agreement regarding the *Cobell* Settlement. As with any settlements, there are high and low dollar amounts that are discussed, but at the end of the day these are negotiated agreement between all the parties involved. At the December 2009 hearing, then-Secretary Ken Salazar was here. He praised the settlement agreement because it created a program to avoid fractionation. Secretary Salazar went on to say that if this settlement agreement is not enacted, he said, then the estimate \$4 million land interests would expand to 11 million interest, I think he said by the year 2030.

Now here we are in 2016 with a status report. The Administration is recommending an extension of the Land Buy-Back Program. Could you talk a little bit about the Administration's forecast, why it changed on the expanded land interests over those years?

Mr. CONNOR. Well, I went back and looked at the hearing record, and you are correct, there was the expectation that we could acquire I think it was up to about \$2.6 million in aggregate interests. At the end of the day, we are going to acquire about \$900,000 to \$1 million aggregate interests.

I think that is a product of, I think, the cautions that particularly Secretary Hayes provided at that hearing. I think he was upfront that we have done a good estimate to look at acquiring a great majority of those tracts that have more than 20 interests involved, but at the same time I think he made clear that we were probably in excess of \$6 billion to \$8 billion if we were realistically going to deal with this program, and I think the number is probably higher than that.

He did note that the caution in looking at these estimates was it all depends on fair market value, what the value of those lands were, and ultimately the interest of willing sellers to sell that land. So those are the products that I think are the difference between the original estimate of about \$2.6 million interests versus where we are going to be at at about \$900,000 to \$1 million.

The CHAIRMAN. As you pointed out, one of the conditions of the Land Buy-Back Program, you just said, is it is strictly voluntarily.

Mr. CONNOR. Yes, sir.

The CHAIRMAN. It relies on willing sellers who can choose to sell some or all or none of their land interests. The data from the Program suggests that about the average acceptance rate of the offers made is approximately 44 percent. So should there be a higher acceptance rate in terms of numbers for the Buy-Back Program? And

why should Congress continue a program that offers solvency rates of only less than half?

Mr. CONNOR. Well, I think overall we have improved. One of the aspects, and I will be completely up front with you. We have gone through a lot of lessons learned, and the outreach and the information and the education is critical to the process, and it has been critical to increasing that participation rate. Now we are up into the 40 percentile area.

I think the idea is that there are a lot of interests to which there will not be offers even made. We are thinking about 2 million acres overall where they are eligible, but because of our resources available to the Program and the desire to get to all 105 locations that we have identified, we will not make offers on about 2 million eligible acres.

I think, as you have heard today, landowners who initially, because of suspicion, because of concerns about the Program, have initially declined offers and I think are rethinking that. So I think on those two areas there is reason to believe that, if the Program is extended, we can make significant more inroads and replicate the success of the Program in its first four years.

The CHAIRMAN. Thank you.

Mr. Monette, in May of this year, in Indian Country Today there was an article, you gave an interview regarding the first round of Cobell scholarships. We talked a little bit about the scholarships today. You indicated your organization was awarding \$2 million in scholarships for 2016 to 2017 in the academic year. We have heard about the incredible demand, the number of students, the high GPAs, all those sorts of things that you would be happy to see.

You also made a suggestion that in addition to accepting applications from enrolled members of U.S. federally recognized Tribes, you have been looking into the need of the descendants of enrolled members who are not themselves enrolled. Can you explain why the applicant pool should be open to non-enrolled Tribal members? And has your organization made any recommendations to the Cobell Board of Trustees on that suggestion?

Mr. COBELL. Chairman Barrasso, if I may, I will answer a little bit of that. The Cobell Board of Trustees assessed the criteria for the administrating organization. Part of that criteria is that the applicant must be a member of a federally recognized Tribe or Alaskan Native corporation. On a yearly basis, even more than that, the Board of Trustees steps back and looks at the programs and looks at ways at how we can enhance the program.

One of the things that we heard initially was that the scholarships should only be open to class members or descendants of those class members. One of the things that we identified after hearing that was using a class member or descendant of a class member for a tiebreaker situation, if I may call it that.

So we are constantly looking at ways to enhance the applicant pool, to enhance the efficiency of the scholarship. As of now, the applicants must be a member of a federally recognized Tribe or Alaskan Native.

The CHAIRMAN. Could I ask you a follow-up? The settlement agreement stipulates that your Board is to govern the scholarship funds, and I think we have a good report of what you said earlier

today. Can you elaborate a little bit on this type of Board governance and how your Board interacts with the Tribes, particularly those Tribes that are already included in the Cobell program and those that have yet to participate?

Mr. COBELL. Yes. The governance that the Cobell Board of Trustees currently has is one of which the settlement agreement is unique in the way that funds are received, and I will start there. The funds are received on a quarterly basis, as I mentioned before. Those funds, per the settlement agreement, are sent to the administrative organization which in turn has to send those funds to our designated investment funds, which in our case now is Vanguard, at our direction.

It is up to the Cobell Board of Trustees to manage those funds in terms of investment portfolios. On an academic year basis, we do sit down and make a decision of how much of the fund that we are going to disburse for scholarships and that we in turn send that amount of funds to the administrative organization.

It is kind of a cumbersome process in that regard, but as far as consultations to Tribes the administration organization is really plugged into the applicants that are applying in terms of questions, in terms of forms, in terms of the overall process, more so than the Cobell Board of Trustees. The Cobell Board of Trustees is primarily responsible for the fiduciary responsibility of those funds and to ensure that the administrative organization is executing disbursement of those scholarships based on our criteria and based on our direction.

I hope that answers your question.

The CHAIRMAN. Yes. Thank you.
Senator Lankford?

**STATEMENT OF HON. JAMES LANKFORD,
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Mr. Chairman, thanks for your leadership in this Committee.

Gentlemen, thank you for being here. Let me give you a real world situation and talk about fractionated lands and some of the issues. Southwest Oklahoma, I can take you to a town where we have highly fractionized land. A home is abandoned; you have windows broken, it becomes a dangerous situation; weeds overgrown or a building or an outbuilding becomes an area where there is crime in the neighborhood and such.

Typically, a city would go in and just abandon that property, would declare it abandoned and would clear the property. They can't do that in this situation. The Tribes often also feel like they can't do that, and if BIA hesitates, that city, that county and that neighborhood has no real solution to something that is becoming a magnet for crime.

That is prime area for this Land Buy-Back. So the question that the cities and the counties ask me is how do we get into the process; how do we help in participation; what do we need to do to be able to get to the top of the list. So my question is how do you determine what is top of the list, what is the low hanging fruit where you have not only voluntary participation, but eager participation of cities, counties, Tribes, and communities that say this is a prob-

lem. This is really what the Program was designed for. How do we help with that?

Mr. CONNOR. Senator, I am assuming that is directed at me.

Senator LANKFORD. Yes, sir.

Mr. CONNOR. I appreciate the question. I think it is a very good question and I appreciate the real world example.

The criteria for how we have looked at which locations that we are moving to, which Reservations, was developed in consultation with Tribes, and there were a number of parameters: the number of fractionated interests, the efficiency with which we can run the Program, the interest of the Tribe, the interest of landowners, and a number of factors along those lines.

The Oklahoma situation, the Oklahoma Tribes are now on our list of 105, so we intend to move towards those locations.

Senator LANKFORD. All of the Tribes or just Oklahoma in general?

Mr. CONNOR. I think it is the five Tribes.

Senator LANKFORD. We have 39.

Mr. CONNOR. The ones I am talking about, Choctaw, Chickasaw, Seminole, Cherokee, and I am missing one.

Senator LANKFORD. Muskogee Creek?

Mr. CONNOR. Yes, sir. So there is a 1947 Act, there are special rules. We are trying to methodically work through how we run this Program on those lands. The recordkeeping is different on those lands; the fact that we need to go through a judicial proceeding to change title on those lands. All these things we are methodically moving forward. We need to stay in close contact with your office as we work through these issues to try and work through how we efficiently run this Program, and we may need some help, quite frankly.

Senator LANKFORD. Which I am glad to. If we can pause there, because that is the Stigler Act, and I want to be able to talk a little bit about the five Tribes and some of the issues.

This particular situation in Southwest Oklahoma is not in that area; it is not one of those five civilized Tribes, it is some of the other 34 Tribes that we have in the State. I guess my question is how do we help in the process. The Tribe wants to be engaged and is engaged. How do we help lift people off the list? Because that becomes a high interest for the whole community to be able to deal with this, and my concern is that we are going to debate about getting onto the list and 2022 is going to come and go.

Mr. CONNOR. I think on this particular matter if we can work directly with you and understand where this location is, who is involved, and try and see what we can do, Senator, I think that is the best opportunity.

Senator LANKFORD. That would be terrific.

Then let me switch over to the Stigler Act and the five civilized Tribes area, because our understanding, and your team has been great with working with my staff and with the staff of Senator Inhofe and all of our congressional delegation. What do we need to fix legislatively and how quickly do we need to get that language in place so that the five Tribes can be engaged and helpful before the 2022 deadline?

Mr. CONNOR. I think those are the issues that are being looked at by our legal office, consulting with the Tribes. I can look for a status on where we are at to try and get you that information as soon as possible. I would assume at this point we would try and tee up something with respect to recommendations and analysis for you for the start of the next Congress.

Senator LANKFORD. Okay, so those recommendations are still pending. Are there any of those that you can talk through today or legislative recommendations to be able to do a fix here, or those are things you can get me in writing and work with our staff?

Mr. CONNOR. I think we are going to have to do that in writing and work with your staff. I am not prepared today. Thank you.

Senator LANKFORD. That is great. No, I understand. We will be able to follow up on that quickly in the days ahead because, again, time is of the essence in all this.

Mr. Chairman, thank you. I yield back.

The CHAIRMAN. Thank you, Senator Lankford.

Well, if there are no more questions for today, members may also submit follow-up written questions for the record. The hearing record will remain open for two weeks.

I want to thank the witnesses for their time and their testimony today.

Mr. Tatsey, I certainly want to, once again, thank you for sharing the story of your uncle, George Tatsey, who lost his life 75 years ago today at Pearl Harbor and made the ultimate sacrifice for our Nation. I want to thank you on behalf of the United States Senate for the sacrifices of him and others who have additionally committed their lives for our freedom.

I would also like to take a moment to thank my staff for their work this Congress. I asked and expected a high work output from them based on the number of hearings we had, the bills that we reported out, the oversight that we conducted. They certainly met my expectations and more. They are an outstanding group of people and I am very proud of them and their efforts that they put forth on behalf of the Committee. They are Mike, Rhonda, Brandon, Emily, John, Jacqueline, Natasha, Mike, Hanna, and Brian. So I want thank each and every one of you for the remarkably good job that you have done.

With that, the hearing is adjourned.

[Whereupon, at 4:05 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. AL FRANKEN, U.S. SENATOR FROM MINNESOTA

Thank you, Chairman Barrasso and Vice-Chairman Tester for holding this oversight hearing, and thank you to our witnesses for coming today.

As we approach the end of the 114th Congress, I want to take a moment to recognize Chairman Barrasso and Vice-Chairman Tester for their leadership of this Committee and their dedication to serving Indian Country.

The Indian Affairs Committee is not the most high-profile committee. But the issues that we work on as members of this Committee are absolutely crucial.

Almost every week, we hear from tribal leaders from across the country about the challenges their communities are facing. When we think about all these challenges, it can be frustrating. But knowing that there are people like Chairman Barrasso and Vice-Chairman Tester who work hard on behalf of Indian Country gives me hope.

So, thank you Chairman Barrasso and Vice-Chairman Tester for your commitment, and for your guidance of this Committee.

And to our new Chairman and Ranking Member, I look forward to continuing to work with you in the next Congress.

PREPARED STATEMENT OF HON. GARY BURKE, CHAIRMAN, BOARD OF TRUSTEES,
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Good afternoon Chairman Barrasso, Vice Chairman Tester, and Members of the Committee, my name is Gary Burke and I am Chairman of the Board of Trustees, the governing body of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). I appreciate the opportunity to provide testimony on the Department of Interior's implementation of the Land Buy-Back Program (LBBP). We view the LBBP as an historic opportunity to restore CTUIR ownership of Reservation lands as intended in our Treaty of 1855.

Pursuant to Article I of our Treaty, the CTUIR ceded 6.4 million acres of its original lands in exchange for the Umatilla Indian Reservation, which was set aside for the "exclusive use" for the Cayuse, Umatilla and Walla Walla tribes. However, due to failed federal policies of the past, we lost over two-thirds of our Reservation land base. The CTUIR has long prioritized the restoration of the Reservation land base set aside in our Treaty, and the LBBP has played a critical role in accomplishing that important goal.

The loss of our Reservation land base occurred shortly after our Treaty was ratified in 1859. In 1882, Congress severed 640 acres from the western end of the Reservation to facilitate the growth of the City of Pendleton. In 1885, two years before the General Allotment Act became law, Congress passed the Umatilla Allotment Act which allotted and diminished our Reservation. The Act diminished the Reservation by opening up some 90,000 acres of Reservation land for sale to settlers. The allotment of our Reservation resulted in the loss of approximately one-half of Tribal lands within the diminished Reservation to non-Indian ownership due to probate, land sales and tax foreclosure. By the 100th anniversary of our Treaty in 1955, we had lost one-third of our Reservation due to diminishment and another third to non-Indian acquisition of allotments issued to Tribal members.

The allotment of our Reservation has also resulted in fractionated ownership of the individual allotments issued to Tribal members. According to the Updated Implementation Plan for the LBBP, the Umatilla Indian Reservation is the 28th most fractionated Reservation, with 1,015 fractionated allotments totaling 66,945 acres which contain 18,828 purchasable fractional interests. Fractionated ownership of these lands makes use and management of these lands difficult, and in many cases impossible. We have also learned that a large percentage of the owners of these fractionated interests are Indians that are not enrolled in our Tribe. For example, when we renegotiated a pipeline right-of-way (ROW) that traversed some 13 miles

through our Reservation in the late 1990s, approximately two-thirds of the owners of the allotments burdened by the ROW were Indians enrolled in tribes other than the CTUIR. While the Umatilla Indian Reservation may have been established as the exclusive homeland for the CTUIR, we had become minority landowners on our own Reservation.

For the past three decades, the CTUIR has dedicated considerable resources to the restoration of our Reservation land base. We have enacted laws, dedicated Tribal revenues and developed Tribal programs to reacquire Reservation lands within our Treaty Reservation boundary and to prevent the loss of Tribal trust lands upon the death of Indian landowners.

The LBBP provides a means to restore Tribal ownership of fractionated interests in trust allotments. Our Tribe has prioritized 400 fractionated allotments, out of a total of approximately 1,300 allotments on the Reservation, for acquisition under the LBBP. These prioritized allotments were heavily fractionated, had a large percentage of ownership by Indians enrolled in tribes outside of our own, or otherwise had important cultural, natural resource or economic and community development significance.

The CTUIR was eager to have the LBBP implemented on our Reservation. We were one of the first Tribes to execute and implement a Cooperative Agreement with the LBBP that defined and funded the work we performed to implement the Program. We believe the implementation of the LBBP under our Cooperative Agreement was a success.

Under the LBBP implemented on our Reservation in 2014–2015, we fully expended our \$12.3 million purchase ceiling to acquire 10,172 equivalent acres on 547 allotted tracts. These acquisitions increased the Tribal ownership of allotments that are critical to economic development, contain important natural resources, cultural sites or were unusable because they were so heavily fractionated.

While the LBBP has been fully implemented on our Reservation, we offer the following comments to the Committee based on our experience in the Program:

1. The LBBP has not eliminated the problem of fractionated ownership of allotted trust land. As Chairman Barrasso stated in his opening comments at the December 7th hearing, the \$1.9 billion LBBP “was not enough” to remedy the fractionated allotment problem. Chairman Barrasso appropriately cited the Interior Department’s recent LBBP Status Report that found that the level of fractionation will return to pre-LBBP levels if it is not continued. We urge the Committee to support Tribal efforts to fund a continuing program to purchase fractionated interests in allotted trust lands.
The CTUIR proves that such continued funding is needed. During the course of the LBBP implementation on our Reservation, we were only able to purchase interests on 40 percent of the allotments on our Reservation. We have much more work to do, and many more willing sellers of allotted trust lands. We call upon the Committee to support a permanent reauthorization of the program for the acquisition of fractional interests in the Indian Land Consolidation Act of 25 U.S.C. § 2212–2215.
2. The CTUIR is aware that many tribes have been unable to fully expend their purchase ceiling under the LBBP. We have notified Department of Interior officials that the CTUIR has the ability to utilize unexpended LBBP funds to purchase additional fractionated interests in trust allotments on our Reservation. Our Land Program has been contacted by numerous land owners who would be willing sellers of their allotment interests. The Committee should insist that the LBBP be transparent in the expenditure of LBBP funds on each reservation and on the process that will be used to allocate unexpended LBBP funds before the 2022 deadline.
3. We believe that Land Buy-Back funds should be made available to reimburse tribes for the purchase of fractionated trust allotments under tribal probate or inheritance codes. Under our CTUIR Inheritance Code, enacted under the Indian Land Consolidation Act, we have the right to prevent the transfer of trust lands by will or intestacy to a non-member of the CTUIR upon the payment of fair market value. We have requested that the LBBP reimburse our acquisitions under this Code dating back to the federal court approval of the *Cobell* settlement in November 2012. The LBBP never agreed to this request. The CTUIR believes our request should have been granted because these probate acquisitions achieve the objectives of the LBBP by acquiring fractionated interest in trust lands and transferring ownership to the Tribe at fair market value as determined by the Department of Interior. Unexpended LBBP funds referenced in comment 2, above, could be allocated to this reimbursement.

4. The LBBP needs to provide more information to affected tribes on the roll-out of the Program in Indian Country. It would have been helpful for us to learn about what had worked, what had underperformed and what had failed in the implementation of the LBBP on other reservations. The CTUIR and other participating tribes have a shared interest with the LBBP in the success of the Program. All tribes want to learn from, and benefit by, the successes (and the failures) of other tribes participating in the LBBP.
5. Effective LBBP implementation on a reservation requires good communication with owners of allotments on that reservation. As the CTUIR experience proves, many owners of allotments on one reservation live on neighboring reservations. The LBBP needs to provide better information on the schedule for LBBP implementation on a reservation to surrounding tribes. With this information, our Land Program staff can provide better responses to land owner questions about the LBBP occurring on neighboring reservations.
6. The Department of Interior needs to commit the necessary personnel to ensure the timely implementation of the LBBP. We experienced delays in the review and approval of our appraisals of the fractionated trust allotments that we had prioritized for purchase under the LBBP. These reviews were conducted by the Office of Appraisal Services (OAS). The timing of outreach efforts, the appraisal of the allotments and the schedule for mailing out offers are dependent upon a timely review and approval of the appraisals by OAS.

The success of the LBBP will do much to improve Tribal sovereignty and economic self-sufficiency. With increased Tribal ownership of trust allotments, and the associated decrease in fractionated ownership, we will be better able to use our Reservation land base to meet the needs of our Tribal members. The United States will also benefit under the LBBP due to the reduction in costs associated with the probate of these fractionated interests and the management of IIM accounts that hold the income generated on these trust allotments. Most importantly, the LBBP is a small but important step by the United States to honor our Treaty and to reverse the failed allotment policy of the 19th century.

This completes my testimony. Once again, on behalf of the CTUIR, I appreciate the opportunity to provide our perspectives on the LBBP. We look forward to working with the Committee and the LBBP to ensure its success in Indian Country, and its continuation beyond the year 2022.

PREPARED STATEMENT OF HON. TROY SCOTT WESTON, PRESIDENT, OGLALA SIOUX
TRIBE

Introduction

The Oglala Sioux Tribe is pleased to submit testimony for this important oversight hearing entitled, “Examining the Department of the Interior’s Land Buy-Back Program for Tribal Nations Four Years Later.”

The Oglala Sioux Tribe is a part of the Great Sioux Nation. Our rights, the United States’ obligations to us and our unique political relationship with the United States are set forth in a series of treaties through 1868. Our Pine Ridge Reservation is massive; it encompasses over 2.7 million acres of land in the southwest corner of South Dakota. These lands are part of the lands reserved in our treaties as our permanent homes and for our absolute and undisturbed use and occupation. Unfortunately, violations of our treaties, the imposition of the Allotment policy and settlers’ encroachments have damaged the integrity and benefits of our lands which we hold sacred. Implementation of the repudiated and unwise Allotment policy caused our Reservation lands to become unbelievably fractionated through the generations, and we have suffered from that policy’s long-lasting negative effects. Some of our members own just a “spoonful of land.” This land, however, is important to them as land is highly valued among our members and is traced back to our treaties and before.

The Oglala Sioux Tribe was the first tribe to enter into a cooperative agreement with the United States Department of the Interior (Interior or DOI) for the implementation of the Cobell Land Buy-Back Program (LBBP or Program). To date, the Program has provided beneficial results for our Pine Ridge Reservation. However, much more work is required if we are to truly address the menacing problem of fractionated interests on our lands.

Pine Ridge Reservation and Implementation of the LBBP

Interior’s Dec. 18, 2012 Initial Implementation Plan for the LBBP listed our Pine Ridge Reservation as the most highly fractionated reservation in all of Indian Coun-

try. It was listed as number one on Interior's "Top 40 list." The magnitude of our fractionated interest problem is enormous. It hinders our economic development, planning, cultural and natural resources preservation and governance. Fractionation also hinders our members' efforts to make their lands useful.

Faced with such a massive problem, our Tribe has been engaged with purchasing fractional interests and land consolidation efforts for decades, long before the LBBP was established. Our Tribal Council has a Land Committee and we have long had a strong Land Office. Thus, when Interior's draft LBBP Plan was issued in 2012, we took great interest as we had a lot of experience—through the Indian Land Consolidation Act (ILCA) and other programs, including the Farm Service Agency (FSA) loans—in efforts to consolidate lands and stem further fractionation on our Reservation. At that time, we encouraged DOI to use the Tribe's experience and knowledge about its lands and to rely on tribes for how best to successfully implement the Buy-Back Program on their reservations. Further, we asserted that tribes should be allowed to design and implement their own plans for reducing land fractionation. We also asserted that the LBBP should be implemented pursuant to the Indian Self-Determination and Education Assistance Act. Finally, we asserted that the Trust Land Consolidation Fund be placed in an interest-bearing account so more monies could be generated for land consolidation activities.

According to Interior's Initial Implementation Plan for the LBBP in 2012, Pine Ridge had 5,982 fractionated tracts with 194,401 purchasable fractional interests that represented 1,194,669 acres of land. Again, our Reservation is the most highly fractionated as recognized by Interior. Interior's Initial Implementation Plan set forth a "purchase ceiling" of \$126 million for purchasing fractionated interests on our Reservation. Interior's Updated Plan dated November 8, 2013 set the purchase ceiling for Pine Ridge at \$125.4 million. We have consistently stated that the entire purchase ceiling amount must be spent on our Reservation.

We entered into a cooperative agreement with Interior in September 2013. While we asserted our desire and capability to carry-out all four phases of Interior's Plan (Outreach; Land Research; Valuation and Acquisition), we, ultimately, participated only in the Outreach phase. This phase, however, was critical to whether the Program would succeed.

Under our first LBBP cooperative agreement, we hired 12 employees, accessed necessary program equipment, and carried-out the planned Outreach activities. These activities included identifying landowner contact information, developing and enhancing communication tools to notify owners about the Program, conducting face-to-face meetings, and creating educational tools about the Program. Achievements under our first cooperative agreement included more than 18,000 purchase offers being made; more than \$81.5 million being paid to selling landowners; and the consolidation of the equivalent of 233,000 acres of land for the Tribe.

We entered a second cooperative agreement with Interior to extend the implementation of the LBBP on our Reservation. This second agreement covered 6 employees to conduct the Outreach services to potential sellers and lasted for seven months. Interior's 2016 Status Report showed that for Pine Ridge, in total, 20,622 individuals received purchase offers and 9,319 individuals accepted the offers for a total amount of \$110,395,928. The amount of fractionated interests that was purchased is equivalent to 292,774 acres of Tribal lands. The effort reduced the fractional interests to 120,966.

A highlighted benefit conveyed by both the Tribe and Interior is that we plan to construct several new buildings in our Wakpamni Lake Community on land that has been consolidated through the LBBP. These buildings will include office space, a conference room, a civic center, a day care, and food distribution storage. Furthermore, we are planning a housing program that is facilitated by our land acquisition under the Program.

We are confident that our Outreach activities were a necessary component for successful implementation of the LBBP on the Pine Ridge Reservation. We believe that having tribal members explain the Program and its process to fellow members was crucial to the Program realizing beneficial results on our Reservation, especially in light of our unique language and cultural considerations. We stand ready to team up with Interior and participate in the Program again.

Implementation Considerations and Needs Going Forward

We support the Deputy Secretary of the Interior's testimony to the Committee stating that long-term strategies are needed for land consolidation. Land consolidation promotes tribal sovereignty and governance. It also facilitates tribal land use and economic development, which is critically needed on our Reservation. We plan to continue our on-going efforts to consolidate our land base. One central objective

is to participate in the LBBP again. We have much more work to do to address the issue of, and problems arising from, fractionation on our Reservation.

From the beginning, we have stated that the purchase ceiling for Pine Ridge must be spent on Pine Ridge. Interior identified \$125.4 million as a purchase ceiling for the Pine Ridge Indian Reservation. This evidences Interior's recognition of our Reservation's severe fractional interest problem. Interior must do everything in its power to expend our purchase ceiling on our Reservation. Funding identified for Pine Ridge should not be spent elsewhere. This will take willingness from Interior to work closely with us and our members every step of the way, and, fundamentally, a commitment to return to our Reservation to continue our cooperative efforts together. At the end of our second cooperative agreement, approximately \$ 15.031 million remains in the purchase ceiling. Interior should return to our Reservation to spend these monies and enter another cooperative agreement with us so we assist in the process.

There also must be adequate time for the Program to successfully work on the Pine Ridge Reservation. Per the Claims Resolution Act, the LBBP is authorized for a period of ten years. Our view is that efforts should be ongoing on Pine Ridge throughout the Program's ten-year authorization. Our Land Office consistently receives inquiries from potential sellers about the possibility of the Tribe purchasing their interests. Other tribal members may not currently be ready to sell, but they might be in the near future. The LBBP should operate in full during the length of its lifetime; this should include ongoing implementation on Pine Ridge, the most highly fractionated reservation, especially in light of the fact that there is still approximately \$15 million left in our purchase ceiling.

Trust Land Consolidation Fund monies should not be returned to the United States Treasury at the end of ten years. The LBBP was agreed to by the *Cobell* case parties as part of the settlement of the *Cobell* case. The Program is a monumental effort to address the severe fractionation of Indian lands and the many problems that it creates. The Program should not be limited by a finite time period and "use-it-or-lose-it" framework. Tribes and Interior must have the time needed to do everything they can to address the serious fractionation problem. This includes time to spend all the Trust Land Consolidation Fund on this effort. It also includes spending all of the monies earmarked for the Program's administrative costs, which totals \$265 million. These monies should be spent on administrative costs and purchasing interests, and no part of them should be returned to the United States.

Any Fund monies that remain should not be returned to the United States Treasury at the end of the ten year period. First of all, the LBBP should be extended. While benefits have resulted from the LBBP, there is much more work at hand to truly address the fractionated interest issue on our Reservation and across Indian Country. Thus, any remaining Fund monies should be used in an extension of the Program. The Fund was agreed to as part of the *Cobell* Settlement. Thus, it would be tragic to have any of such monies returned to the Federal Government, the party responsible for mismanaging the trust accounts and imposing the devastating allotment policy in the first place. Second, the Fund monies should be used to purchase fee lands or large tracts within reservations as identified by the tribes as part of their overall land consolidation efforts.

Finally, we agree with the concept of the Scholarship Fund. However, our tribal members have not benefited from the Fund to the extent they should in light of the Scholarship monies that were generated from our participation in the Program. Our view is there should be an effort to distribute such monies to regions in proportion to the region's generation of such monies.

Conclusion

We appreciate the opportunity to submit written testimony for the record for this important oversight hearing. We are grateful for the Committee's focus and interest in the Buy-Back Program, and look forward to working with it and the Department of the Interior as the Program continues and long-term land consolidation strategies are developed.

PREPARED STATEMENT OF HON. LIANA ONNEN, CHAIRWOMAN, PRAIRIE BAND
POTAWATOMI NATION

The Prairie Band Potawatomi Nation (the "Nation") is pleased to provide written testimony for the United States Senate Committee on Indian Affairs' December 7, 2016 hearing entitled "Examining the Department of the Interior's Land Buy-Back Program for Tribal Nations, Four Years Later." Our participation in the Department of the Interior's (DOI) Land Buy-Back Program (LBBP) provided substantial support

to our effort to combat the issue of fractionated land interests on our Reservation. However, much more is needed if we are truly going to conquer this vexing problem. We set forth information below about how the LBBP worked for us followed by certain recommendations for the Committee to consider.

To fully understand the importance of the LBBP one must look at how fractionated interests in land developed. The General Allotment Act and subsequent allotment acts attempted to assimilate Native people by awarding lands held collectively by Tribes to individual Indians, and sold "surplus" lands to non-Indians. Congress soon realized the failure of the Allotment Act and ended it by passage of the Indian Reorganization Act. Unfortunately, the damage had already been done. Tribes lost enormous amounts of land they previously owned, and individual Indian allottees and their heirs soon lost meaningful management authority over their allotted lands due to the onset and continuous growth of fractionated ownership.

Land tracts with multiple co-owners make it extremely difficult to obtain the required approvals for leases and other uses. As a result, numerous tracts are unoccupied and not used for any purpose. Instead, they sit dormant; their potential not being realized. In addition, the resulting checker-board nature of land ownership has created challenges for the Nation that impact our sovereignty, self-determination and efforts toward economic development and land use. Fractionated ownership also makes it difficult to protect and access sacred and cultural sites. While Congress has attempted to correct the problems arising from allotment, none of its efforts have provided the critical funding sufficient to restore Tribal land bases.

In 2010, Congress enacted the historic legislation to ratify and confirm the 2009 Cobell Settlement. The Claims Resolution Act provides a foundation for addressing the fractionation of Indian lands that occurred under the policies of allotment and assimilation. In the Act, Congress established the Trust Land Consolidation Fund to purchase, on behalf of tribes, fractionated interests in trust from willing individual sellers on their reservations at fair market value. The purchased interests are transferred to the tribes. The Trust Consolidation Fund totaled \$1.9 billion to be administered by the DOI through the LBBP.

As described in the DOI's November 2014 status report, within our Reservation there were approximately 323 fractionated tracts of land, comprising 18,004 acres with 9,618 purchasable fractional interests and 2,204 associated unique landowners. To address the impacts of the fractionated land base, in December 2014, our Nation submitted an application to participate in the LBBP through a cooperative agreement with the DOI. Per the cooperative agreement, we assisted the DOT in purchasing fractionated interests on our Reservation by engaging in (a) preand post-offer outreach; (b) identifying interested sellers; (d) notifying owners of the opportunity to sell; and (e) identifying addresses and updating owner contact information.

The DOT capped tribal administrative costs at \$148,796.00 for our activities; set our land purchase ceiling at \$4,352,826.00; and set the offer cut-off date for individual sellers as June 8, 2015. We had the first official event, a public meeting, on the Reservation in February 2015. Through the course of participating in the LBBP, the Nation: (1) employed three staff, (2) held three public meetings in Kansas, (3) held two public meetings in Wisconsin, (4) held an additional total of 18 outreach events on the Reservation, and (5) had a total of 265 attendees sign in at these events. By final closeout of our cooperative agreement at the end of September 2015, 1,656 individuals received offers totaling \$10,651,031.00 and 682 individuals accepted for a total of \$5,157,029.00. This represented 3,299 equivalent acres purchased for the Nation through the Program.

The LBBP provided benefits to our Nation as it reduced the fractionation of undivided interests on our Reservation. We have attached a "before and after" map showing the results of the LBBP on our Reservation. The Program was conducted with no cost to the Nation. Our administrative costs were reimbursable and the funds to purchase the interests were provided by the United States through the Trust Land Consolidation Fund. In addition, the LBBP has tripled tribal lease revenues from our trust lands. The Nation's increased ownership of undivided interests in tribal trust lands has increased the Nation's revenues from \$53,508.29 in 2013 to \$166,784.62 in 2016. It is important to realize, however, that the LBBP is limited in scope, and that more is necessary to combat our fractionated interest issue.

The Nation had 323 eligible tracts with a combined 9,618 purchasable fractionated interests with an estimated value of \$25,202,984. The LBBP, for our Reservation, only had offers accepted on 155 tracts. This left 168 eligible tracts, more than 50 percent of the fractionated land, with no consolidation through the LBBP. While the LBBP helped reduce fractionation, it by no means eliminated it. Only one tract was completely purchased by the Nation; thus, eliminating fractionation only on that one tract. To eliminate fractionation on our Reservation, we need

our participation in the LBBP to be extended, and the United States needs to fully commit to land consolidation efforts.

Based on our experience with the LBBP, we recommend the following:

- Extend offer deadlines. The six months allowed for landowners to respond was not long enough. It took time for potential sellers to become familiar with the LBBP and comfortable with the idea of selling their interests. Some of our members wanted to sell after the LBBP ended on our Reservation.
- Provide more resources for Outreach activities. We could have done more outreach for the LBBP if more resources were provided. With more resources, we would have been able to make follow-up calls to those who were undecided about selling their interests or uninformed about the LBBP or its process. This could have facilitated more sales prior to the deadline.
- Provide resources for other efforts to combat the fractionated interest issue. We engaged in other efforts to combat the fractionated interest problem on our Reservation. For example, we conducted a Wills Workshop to help our members prepare wills in an effort to reduce future fractionation. Tribal members who pass without wills will create the same fractionation problem the LBBP is trying to fix. The United States needs to dedicate resources to a variety of efforts aimed at reducing fractionation.

The LBBP has made positive changes for the Nation. However, more work is required. We realize that the LBBP has a statutory end date. All the progress that has been achieved must be protected by extending the LBBP beyond its expiration. Furthermore, a necessary component to such an extension is adequate funding. Congress should include sufficient funding in the DOI's budget to allow all interests to be purchased from willing sellers. Purchasing some of the undivided interests is only a band-aid fix: a delay in the land fractionation problem. Over time we will be in the same position with our fractionation if we do not engage in a concerted, dedicated effort to eradicate fractionation once and for all. This will take a serious commitment to land consolidation. The LBBP must have more time and the sufficient amount of money to fix the problem the Federal Government created through its misguided allotment and assimilation policies.

The Nation thanks you for the opportunity to provide written comments to the Senate Committee on the impacts and future needs of the Land Buy-Back Program.



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 7 1 2016

Senate Committee on Indian Affairs
Chairman John Barrasso
838 Hart Senate Office Building
Washington, D.C. 20510

Chairman Barrasso,

This is to provide an update on our ongoing efforts to implement the Land Buy-Back Program on the Wind River Indian Reservation in Wyoming.

As you know, in 2010, Congress enacted legislation to ratify and confirm the settlement between Plaintiffs and the Federal government in the *Cobell* litigation. The Claims Resolution Act helps to reverse the fractionation of Indian lands that was set in motion under repudiated policies of allotment and assimilation. Since the Program began making offers in December 2013, more than \$975 million has been paid to individual landowners and the equivalent of nearly 1.8 million acres of land has been transferred to tribal governments.

As you may recall from our recent hearing, the Buy-Back Program's implementation schedule includes 105 locations through mid-2021. These locations represent nearly all landowners, fractional interests and equivalent acres, as well as all Bureau of Indian Affairs regions and states with fractionated tracts.

Our pursuit of this aggressive implementation schedule will provide new opportunities, but it will also yield new challenges. This includes our work to implement the Program at Wind River, which is among the 105 locations. We have, however, made notable progress by actively engaging with both the Eastern Shoshone and Northern Arapaho Tribes.

Recently we proposed planning agreements that include Program funding in order to help the Tribes coordinate in preparation for implementation. We hope that the leadership from both Tribes agree to these agreements before the end of the year. In doing so, they will keep us on track to extend purchase offers to interested landowners as early as mid-2018, once appraisal and other land research is conducted. These agreements reflect a core value of the Program – that we remain flexible and tailor the Program to each location in light of the needs of the community.

If there is any additional information we can provide regarding this ongoing collaboration, please contact me.

Sincerely,

John H. McClanahan
Director
Land Buy-Back Program for Tribal Nations

○