

PREPARED STATEMENT OF THE HONORABLE SUSAN WAUKON

REPRESENTATIVE OF THE HO CHUNK NATION LEGISLATURE

TO THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING

“IMPROVING THE TRUST SYSTEM: CONTINUING OVERSIGHT OF THE  
DEPARTMENT OF THE INTERIOR'S LAND BUY-BACK PROGRAM”

July 16, 2014

### **Introduction**

Good afternoon, Chairman Tester, Vice Chairman Barrasso, and members of the Committee. My name is Susan Waukon and I am pleased to provide this testimony on behalf of the Ho-Chunk Nation of Wisconsin (“Nation”) on improving the trust system and the Department of the Interior’s Land Buy-Back Program (“Buy-Back Program”). I serve as an elected member of the Nation’s Legislature and represent District 1, which includes most of the northern half of the State of Wisconsin.

The Nation, known as “People of the Big Voice,” has a tribal enrollment of 7,500 members and our tribal headquarters is located in Black River Falls, Wisconsin. Forced removals and land cession treaties with the federal government greatly reduced what was once more than 10.5 million acres of the Nation’s aboriginal land. The Nation today owns approximately 11,538 acres of land situated throughout 25 counties in the states of Wisconsin, Minnesota, and Illinois. Using its own funds, the Nation purchased approximately half of this land.

The Nation has a long history of reacquiring land and purchasing fractionated interests in land. For several years, the Nation participated in the Indian Land Consolidation Program, which was the predecessor to the Buy-Back Program and based in Ashland, Wisconsin. In 2009, the Nation formally enacted a land consolidation code that prioritizes the Nation’s land acquisitions. The Nation has also developed a tribal probate code, has assumed responsibility for the Land Title Records Office, and is in the process of assuming control over surface leasing under the recently-enacted HEARTH Act.

The Nation is listed as 65th in the Buy-Back Program’s implementation plan. The Nation is currently developing a cooperative agreement to formally participate in the Buy-Back Program.

### **Recommendations for the Buy-Back Program**

Based on our preparations and work with the Buy-Back Program to date, the Nation has several recommendations to improve the program.

## 1. Develop Rules for Reallocation of Purchase Ceilings

To date, the Buy-Back Program has focused most of its resources on those tribes with the largest purchase allocations under the program's implementation plan. The Nation agrees that those tribes with the highest rates of fractionation should benefit from early deployment of program resources.

The Nation is very concerned, however, that unless the Buy-Back Program quickly develops and implements rules governing the reallocation of purchase ceiling funds, much of the land consolidation fund will revert back to the U.S. Treasury and will be forever lost to Indian country. Four years into implementation, the Nation understands that of the offers that have been extended on the reservations where the Buy-Back Program is active, the acceptance rate has been approximately 30 percent. This acceptance rate may increase as the program learns more and becomes more efficient, but we believe a sense of urgency needs to accompany future efforts.

Even if the acceptance rate were to eventually increase to 40 or 50 percent, this would still leave hundreds of millions of dollars in need of reallocation to other tribes. It would not be feasible to reallocate these funds near the end of the ten year life of the program. Rather, Buy-Back Program managers need to make these decisions much sooner to afford the recipients of reallocated funds a meaningful opportunity to spend the money.

If the current acceptance rate of offers holds, it is conceivable that land purchase funds may need to be reallocated more than once. For all of these reasons, the Nation strongly recommends that the Buy-Back Program develop and publicize guidelines for reallocation of purchase ceiling funds as soon as possible.

## 2. Authorize Tribes to Contract Buy-Back Program Functions and Invest Program Funds

The Buy-Back Program is governed by the Indian Land Consolidation Act (ILCA), and the ILCA does not allow tribes to contract program functions under the Indian Self-Determination and Education Assistance Act (ISDEAA). With the support of tribal organizations, Vice-Chairman Barrasso sought to amend the *Cobell* settlement in 2010 to authorize tribes to use contract and compacts under the ISDEAA to manage the Buy-Back Program. At that time, however, the Administration opposed any change to the settlement and specifically opposed allowing tribes to contract the program.

Equally important, for the ten year duration of the program, the \$1.9 billion appropriated for the Buy-Back Program will sit in a non-interest bearing account and gain no value over time. Had the ISDEAA changes been incorporated when Congress ratified the *Cobell* settlement, this would not be an issue because the ISDEAA allows funds for contracted or compacted programs to be transferred directly to tribes, at which point the tribes can invest the funds themselves. Every fiscal year that goes by without this money being invested represents money and opportunity lost.

Ideally, the Buy-Back Program would transfer the full amount of the Nation's purchase ceiling amount (approximately \$1.2 million) to the Nation and let us administer the program functions and invest the funds. If the Buy-Back Program followed this model for all tribes that have purchase ceiling allocations and wish to enter contracts and compacts with the department, the program would know much earlier those tribes that have higher rates of offer acceptance and those where acceptance rates are low. This would allow for a more equitable and efficient reallocation process – i.e., directing the Buy-Back Program funds where the funds are most likely to be spent.

Legislation has been introduced in both the House (H.R. 5020) and the Senate (S.2387) that addresses tribal contracting of the Buy-Back Program under the ISDEAA and investment of Buy-Back funds. There are key differences in these bills and the Nation urges this Committee to work with the House Subcommittee on Indian and Alaska Native Affairs to find the fastest way to ensure these changes are enacted into law.

3. Deploy Additional Resources to Engage with Those Tribes that are not on the Top 40 List

The Nation understands the Buy-Back Program's desire to initially work with those tribes with the largest purchase ceiling allocations. Other tribes that are not in the top 40, however, certainly have the managerial capacity to begin making offers to landowners immediately or with little administrative preparation. At the end of the Buy-Back Program's effective life, success will be measured by the total number of fractionated interests purchased and the total amount of acreage re-consolidated in tribal ownership.

In interactions with the Buy-Back Program, the Nation has struggled to get answers to questions as the program staff's time seemed focused on the largest tribes. The Nation recommends that the program make additional resources available to work with those tribes, like the Nation, that are not on the top 40 list.

### **Forward-Looking Trust Reform**

The Nation is a strong proponent of tribes having direct control over their resources and minimizing federal bureaucracy in tribal decision-making, especially on matters relating to the Nation's trust lands.

For example, the Nation is one of a small number of tribes nationwide and the first in our region that have contracted the BIA's Land Title Records Office (LTRO) under the ISDEAA. Contracting the LTRO function has allowed the Nation to access the TAAMS system and generate title status reports without having to rely on the BIA's Regional Office. Performing the LTRO function also allows the Nation to approve leases, permits, and process land acquisitions more quickly than relying on the BIA.

Assuming these functions, in tandem with the Nation's planned assumption of surface leasing authority under the recently-enacted HEARTH Act, will facilitate and expedite land-related approvals formerly performed by the federal government. The Nation has also submitted tribal

leasing regulations to implement the HEARTH Act to the BIA but, ironically, the 120 day window for the BIA to act on the regulations has passed, and the Nation has yet to hear any response from that agency. Nonetheless, the Nation is hopeful that its tribal regulations will be approved soon so that it can further expedite leases of its tribal lands. Reducing the federal bureaucracy in these areas will allow the Nation to move more quickly on economic development opportunities that will, in turn, enhance the quality of life for the Nation's members.

As the Committee continues its oversight of the Buy-Back Program and considers reforms to federal trust functions, we encourage the Committee to pursue proposals that have practical, tangible impacts on tribal communities and that will reduce federal bureaucracy. One such proposal is S.165, the Indian Trust Asset Reform Act, which would give tribes a direct role in the management of their trust resources and transition Office of the Special Trustee functions under a single administrative umbrella. The Nation strongly supports this bill and urges the Committee to expedite its consideration of the bill in the remaining months of the 113<sup>th</sup> Congress. .

This concludes my testimony. At this time, I would be happy to answer any questions.