

**STATEMENT OF  
JAMES CASON, ACTING DEPUTY SECRETARY  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE UNITED STATES HOUSE SUBCOMMITTEE ON INDIAN, INSULAR  
AND ALASKA NATIVE AFFAIRS  
HEARING ON THE STATUS AND FUTURE OF THE COBELL LAND  
CONSOLIDATION PROGRAM  
MAY 23, 2017**

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is Jim Cason. I am currently serving as the Acting Deputy Secretary of the Department of the Interior. Thank you for the invitation to appear today to update this Committee on the status of the Department of the Interior's (Department or Interior) Cobell Land Consolidation Program, commonly known as the Land Buy-Back Program for Tribal Nations (Buy-Back Program).

I worked on the Cobell settlement over the course of my tenure at Interior during President George W. Bush's presidency. When I departed my post in 2009, I cautiously hoped the groundwork we had laid would result in the consolidation of fractional interests, which was a core component of the settlement. Since returning to Interior, I have specifically focused on the examining the status of implementing the Buy-Back Program. After expending a total of \$1.3 billion dollars to date and consolidating nearly 700,000 fractional interests (representing the equivalent of 2.1 million acres) on more than 40,000 tracts at 39 locations, it is my view that Interior has not been successful in materially reducing fractional interests.

**Introduction - Land Fractionation and its Challenges**

Fractionation results from a past policy of breaking up tribal land bases into individual allotments or tracts and then the division of ownership among more and more owners after the death of the original owner or allottee. Although allotted land itself is not divided physically, the children, spouses, and other relatives of the original and successive landowners inherit undivided common ownership interests in the land. As a result, fractionation has grown exponentially over generations.

Many allotted tracts now have hundreds or even thousands of individual owners. When tracts have so many co-owners, various challenges arise for more than 150 reservations across Indian Country and for Interior, including the following.

First, many fractionated tracts are under-utilized, unoccupied, or unavailable for any purpose. As a result, tribes are experiencing major challenges that impact tribal sovereignty and self-determination. Additionally, many tribal reservations experience a checkerboard ownership pattern, where some tracts of land are owned by non-Indian landowners not subject to tribal jurisdiction, creating jurisdictional challenges. Both fractionated tracts and checkerboard reservations tie up land within reservation boundaries, making it difficult to pursue economic development, housing, and infrastructure.

Second, the Department is responsible for administrative activities related to fractional interests – from maintaining Individual Indian Monies (IIM) accounts for individual landowners to record keeping associated with each interest. These activities cost the Department hundreds of millions of dollars annually in appropriated funds. These costs are driven by the number of landowners who own fractional interests across Indian Country, as well as the number of fractional interests. A portion of the Bureau of Indian Affairs' (BIA's) annual budget for Realty, Leasing, Land Title and Records, Probate, Forestry, and Natural Resources (a total of \$126.8 million for FY 2017) relates to the management of trust resources held for individual landowners. For example, BIA maintains records for each interest, documenting how and from whom each segregated interest was inherited. In addition, when an owner of an IIM account or fractional interest in real property dies, current law provides that those trust assets (regardless of value) will be subject to a probate administration. Current estimates provide that it takes on average over two years to complete a single probate administration with an average cost in excess of \$3,000 (this is regardless of the underlying value of the estate). As of September 30, 2015, there were approximately 54,000 IIM accounts with current balances between one cent (\$0.01) and one dollar (\$1.00). The aggregate value of these small balance accounts is approximately \$16,000. Thus, it is estimated that it would require over \$162 million to probate the combined value of \$16,000 in those accounts.

Consolidation of fractional interests reduces the potential administrative costs associated with managing fractionated land.

### **Buy-Back Program and Results Thus Far**

The *Cobell v. Salazar* Settlement Agreement (Settlement) provides for a \$1.9 billion Trust Land Consolidation Fund (Fund) to help address fractionation. The Settlement makes the Fund available to the Department to acquire fractional interests in trust or restricted land from individuals who are willing to sell their interests for fair market value. The Fund is available for a 10-year period. Any monies remaining in November 2022 return to the Treasury.

In 2012, immediately after appeals were exhausted through the U.S. Supreme Court and the Settlement became final, the Secretary of the Interior (Secretary) established the Buy-Back Program to implement the land consolidation aspects of the Settlement. The principal goal of the Program is to acquire fractional land interests through voluntary sales that place purchased interests into trust for tribes.

When the Program began purchasing fractional land in 2013, the scope of fractionation included, in part, approximately:

- Approximately 150 unique locations with 97,000 fractionated tracts, totaling 11 million tract acres; and
- 3 million purchasable fractional interests (comprising 8.3 million equivalent acres within the 97,000 tracts) held by 243,000 individual owners residing in all 50 states and in many foreign countries.

Program implementation thus far has focused on a subset of the 150 locations.<sup>1</sup> As detailed in reports issued each year, the Program has considered various factors to determine the sequence of implementation locations, including the severity of fractionation. To date, the Program has announced 105 locations for implementation through 2021.

Since the Program began making offers in December 2013, more than \$1.18 billion has been paid to landowners with interests at 39 of the 105 locations. Specifically, the Program offers landowners fair market value for their fractional interests, as required by the Settlement. As of May 19, 2017, the Program has paid landowners \$1,180,837,370 to consolidate 696,894 interests equivalent to 2,107,109 acres. This amount includes the base payment of \$75 the Program provides to landowners to compensate them for their time and effort spent in reviewing and completing their offer packages; in total, the Program has paid landowners approximately \$6 million in base payments.

As of May 19, the Program has acquired land at an average cost of \$558 per acre, with a range of \$7.50 per acre for mineral interests determined to have no viable economic mineralization to \$648,817 per acre for a 2.52 acre tract that was a tribal acquisition priority. As of February 2017, 75 percent of the interests purchased and 82 percent of the equivalent acres consolidated cost less than \$861 per acre.

More than 13,600 tracts have reached at least 50 percent tribal ownership as a result of Program purchases. Notable increases in tracts with at least 50 percent tribal ownership include Navajo (7,000 percent increase) and Blackfeet (1,600 percent increase). Getting tracts to 50 percent or more tribal ownership enables more effective land use and management. For example, before Program implementation at the Crow Creek Indian Reservation, there was a single tract with approximately 1,200 unique owners. After Program implementation, there are now about 850 unique owners, but the Tribe now owns 50.7 percent of the trust interests. Because the Tribe owns the majority of the trust interests, the Tribe can make land use decisions, making the BIA leasing process more efficient.

The Department is able to close IIM accounts of landowners who sell all their fractional land interests through the Buy-Back Program. To date, OST has closed 9,370 accounts as a direct result of the Program, some of which may reopen. It is difficult to close accounts because the Program is voluntary and because some owners have interests in multiple locations and may also inherit interests in the future once probates are completed.

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1. Although the Program has identified 150 locations with fractionated land, it is important to recognize that there are additional land areas, beyond the 150, which are not currently a focus of the Program. This includes certain “off-reservation” or public domain lands where tribal jurisdiction is sometimes unclear, as well as fractionated tracts in Alaska; the Settlement and the Claims Resolution Act of 2010 provide that the Fund will be distributed in accordance with provisions of 25 U.S.C. §§ 2201 et seq., which includes a provision specifically excluding lands located within Alaska. See 25 U.S.C. § 2219.

Taking into account Program and other reductions and increases in interests due to ongoing fractionation and other reasons,<sup>2</sup> the present number of fractional interests associated with the 150 locations is 2,552,201, which is a 14 percent reduction since 2013. The percent reduction for the 39 locations where implementation has occurred is 21 percent. Location specific results include Blackfeet, which has seen a 51 percent reduction in fractional interests.

To date, the Program has expended 75 percent (more than \$1.17 billion) of the portion of the Fund available for purchasing fractional interests. It has also expended 26 percent of the \$285 million allowed for implementation costs (\$73.4 million or approximately 6 percent of land sales), which sum includes mapping, mineral evaluation, appraisal, and outreach costs to implement the Program, some of which is expended by tribal governments through cooperative agreements.<sup>3</sup> The total amount remaining in the Fund is \$585,790,674.

The Program's ability to address fractionation is limited by various factors, especially the size and term of the Fund and the voluntary nature of the Program.

The Department has long realized the magnitude of the problem of fractionation in Indian Country. In 2003, Interior staff testified before the Senate Committee on Indian Affairs that addressing fractionation would cost \$10 or \$20 billion if not addressed quickly. In 2012, the Department noted that the Fund would not be sufficient to purchase all fractional interests across Indian Country. In 2016, the Program estimated the cost of remaining fractional interests at more than \$20 billion, which does not include all fractional interests in Indian country. In addition, the Fund is only available for a limited time of 10 years, currently set to end in November 2022, which has creates an additional constraint on Program operations.

Another key parameter is that the Program is voluntary. Landowners who receive offers can chose whether or not to sell their interests. As of May 19 2017, the Program had sent offers to 135,283 landowners, 58,422 of whom accepted their offer and chose to sell some or all of their fractional interests. While the acceptance rate has averaged 43 percent at the 39 locations where the Buy-Back Program had been implemented to date, it has varied from approximately 80 percent regarding offers for interests at the Swinomish Indian Reservation to approximately 23 percent for offers at the Rosebud Indian Reservation. More than half of the landowners who have received an offer have chosen not to sell their fractional interests. This could be due to a number of reasons, including that the cultural heritage associated with the land is sometimes more important to the landowner than its monetary worth. In a survey issued by the Program in

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2. Moreover, even as the Program consolidates interests, new interests are also being created. Ongoing fractionation has resulted in the addition of nearly 170,000 fractional interests since 2013. Additionally, 70,000 additional interests were created due to partitioning work and nearly 19,000 interests were entered into the BIA title system (Trust Asset and Accounting Management System (TAAMS)) for several locations in Eastern Oklahoma.

3. The Settlement also authorized the creation of the Cobell Education Scholarship Fund, overseen by the Cobell Board of Trustees, which provides financial assistance to American Indian and Alaska Native students for post-secondary education and training. Based on a formula explained in the Settlement, the Buy-Back Program provided funding to the Scholarship Fund. As of April 2017, the Program reached its cap of \$60 million in transfers to the Scholarship Fund.

2016, landowners indicated that reasons not to sell included that they wanted to keep land in the family.

Another limitation is that the Program has avoided certain types of fractional interests due to their complexity and other factors. For example, the Program has not been purchasing interests held by approximately 27,800 deceased individuals with estates to be probated. Nor has it been purchasing the interests held by more than 6,000 individuals under a legal disability (e.g., non-compos mentis or minors). Moreover, there are additional owners with interests that will not be acquired by the Program, such as owners of fee interests or owners of full (1/1) ownership interests, the latter of which may fractionate when the owner passes away.

### **Improving the Impact of the Program**

In a recent notice to tribal points of contact at the approximately 150 locations identified by the Program, the Program indicated that it is undergoing a brief strategy review period during which the Department is analyzing potential changes to the Program to further address fractionation. During the strategy review period, the Program will move forward with implementation at those locations where a fully executed cooperative or other agreement has been reached between a tribe and the Program. The Program will wait until the review period is complete before continuing work at locations where no such agreement exists.

I have directed the Buy-Back Program to update its purchase offer strategy to construct landowner purchase offers to better balance reducing fractionation while also facilitating an increase in the number of tracts that reach at least 50 percent tribal ownership. This approach follows evaluation of numerous alternatives and analysis and it considers various factors, including: greater emphasis on the goal of reducing fractionation, existing or potential decision-making ability on tracts, available funding, cost, tribal acquisition preferences, and past or potential response rate.

During the strategy review period, we have invited tribal communities to provide their feedback on various strategies, which could include: further sharing of appraisals, focusing on land value, interest size (e.g., less than 25 percent ownership in a tract), and tract control; facilitating co-owner purchases; or revising the schedule of 105 locations (e.g., adding or removing locations and/or returning to locations that already received offers). We have been clear that potential adjustments could change where implementation may occur, including adding or removing locations and/or returning to locations where purchase offers have already been sent.

While the Department is doing as much as it can to review and improve the Program, it is clear Congress has a role as well. The Department has identified at least two potential paths forward for Congress' consideration. Ultimately, Congress will determine the direction Interior goes.

Congress may leave the initial legislation in place and allow the Program to use the remaining dollars to resolve a small portion of the ongoing increase in fractionation. After those finances are exhausted, the Program would no longer be able to continue further work on resolving fractional interests. Depending on Congress' objectives for the Program, allowing it to proceed untouched may be sufficient considering its popularity among tribes across the country. Many

tribes who have actively participated have already seen the benefits of consolidating the number of landowners for a single tract. The collective advantages across Indian Country are enormous, including the restoration of land productivity and production of long-term sustainability for tribal communities.

That said, the remaining dollars will quickly deplete. In the alternative, Congress could offer amendments to the legislation which would allow the Department to leverage the remaining \$586 million dollars to carefully target interests. Such changes could take the form of granting the Department authority to purchase and hold fractional interests, which would then be resold to an individual tribal member or tribe. The revenue collected from those sales would then be placed directly back into the Buy-Back Program with the intention of funding future purchases of the most fractionated land.

This revolving fund model would afford us the flexibility to target specific tracts, purchase interests therein, and even combine neighboring tracts for sale, which would in turn allow tribes to have greater control of a greater amount of interests. Leveraging the limited remaining dollars gives the Department a future to continue our trust responsibilities to Indian Country while meaningfully addressing the core problem we initially sought to resolve.

The two alternatives discussed above are intended to commence a critical dialogue about the future of the Buy-Back Program. In no way are these suggestions final, nor has Indian Country been formally consulted on these options. I see my testimony today before the Committee as an opportunity to update Congress on the severity of the situation and determine what may be the best path forward. The Department looks forward to working with Congress on this important issue.

### **Conclusion**

I view the Buy-Back Program as a once in a lifetime opportunity to meaningfully address fractional interests that plague tribal communities and their efforts towards sovereignty and self-determination. Interior's data suggests that the Program has made relatively little progress in resolving this ongoing problem. In fact, in my mind we are almost back where we started eight years later, just treading water. Fractionated tracts threaten financial interests, present and future land utilization, and are costly to the Department. I suggest that the authorizing and appropriating committees of jurisdiction take a fresh look into the future direction Interior takes on this Program: a continuation of the status quo or language providing authorities to leverage the remaining funds.

This concludes my written statement. Thank you for your time, and I am pleased to answer any questions you may have.