

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

BEFORE THE
**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON
INDIAN AND ALASKA NATIVE AFFAIRS**

OVERSIGHT HEARING ON
**IMPLEMENTING THE COBELL SETTLEMENT: MISSED OPPORTUNITIES AND
LESSONS LEARNED**

APRIL 3, 2014

Good afternoon. On behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, I thank you for your interest in this important subject. My name is Grant Stafne. It is an honor for me to serve on our Tribes' governing body, the Fort Peck Tribal Executive Board, as my parents, June and A.T. Stafne, and my uncle Caleb Shields did before me.

I would like to thank Chairman Young, Congressman Daines, and the members of the Subcommittee for holding this hearing. The settlement of the Cobell litigation presents the United States with the opportunity to accomplish great good: provide redress for Indian land owners who were victims of the Interior Department's failure to provide an accounting of IIM accounts and for some mismanagement of Indian trust resources, reduce fractionated Indian land ownership, and attempt to redress the negative results of the General Allotment Act through restoration of tribal land bases that will promote Indian self-determination, strengthen and advance the economic security of tribal communities, and fulfill the United States' trust responsibility to Indians. The foundation for the trust responsibility has its origins in our original land cessions to the United States and the federal government's ensuing obligation to extend its protection to Indian tribes and our reserved lands.

Tribes obviously welcome any program that has the potential to undo the devastation of fractionated land ownership that began when this Congress first enacted Allotment Acts in 1887. Sadly, in its 35-year existence, the allotment of Tribal lands to individual Indians resulted in the loss of 90 million acres of Tribally owned lands. Over the years, the daunting task of managing the remaining lands held by individual Indians in small fractionated interests established the basis for the Cobell litigation brought on behalf of individual Indians. Including a program to purchase fractionated land interests

for restoration to Tribal ownership in the Cobell settlement benefits Tribes and is *long* overdue.

Cobell Settlement Payments

While payments to individual Indians that were members of the accounting class occurred well over a year ago, payments to Tribal members in the Trust Mismanagement class of the settlement have not yet received payments. Payment dates have been delayed throughout the last year and many individuals are losing faith that payments are forthcoming. Indian Country would greatly appreciate your assistance to expedite the long overdue payments to members of the trust mismanagement class.

DOI Land Buy-Back Program for Tribal Nations

Unfortunately, the Cobell Settlement was developed without Tribal consultation or input despite the significant impact the settlement would have on Tribal lands. The Land Buy Back Program funding, including funds for actual land purchases and administrative costs, were determined without Tribal input and without consideration of the challenges of trust land purchases on a large scale basis. Further, the Indian Land Consolidation Act was incorporated wholesale to govern land purchases without a review of some of the complexities and burdensome provisions of ILCA, in light of the time frame to expend all purchase funds. Indeed, the Cobell settlement ignored fundamental federal Indian policy introduced by President Nixon that “the Indian future” should be “determined by Indian acts and Indian decisions.”

DOI initially developed and released a Land Buy Back Program for Tribal Nations implementation plan that detailed the settlement components and process for implementation without Tribal consultation. In the early consultation sessions, Tribes were greatly concerned about: 1) the award of funds back to the Department of Interior to purchase fractionated lands; 2) the establishment of an education fund as an incentive for individuals to sell trust interests; 3) prohibiting Tribes from entering into P.L. 93-638 contracts for land buy back implementation; and finally 4) that Tribes were relegated to providing a priority list of tracts for DOI purchase only. However, these components of the Buy Back Program were negotiated by the parties and specifically included in the settlement and the 2010 Claims Resolution Act. Thus, despite Tribal outcry on these issues, the standard response has been that neither the parties to the settlement or Congress is willing to reopen the settlement or the approving Legislation. Despite the hesitancy to modify the Settlement or legislation, we would propose consideration of minor modifications to the settlement agreement and technical amendments to the legislation that would authorize P.L. 93-638 contracts for both land purchases and implementation efforts (allowing Tribal access and control over both land purchase and administrative funds), and revise the management of the education fund. Tribes have repeatedly expressed their preference for allocation of the funds directly to Tribes rather

than to a non-profit corporation over which Tribes have no control or access to funding. Clearly, education funds in the hand of Tribes would best meet the education goals of Tribal people. Federal funds, albeit settlement funds, awarded to non-profit entities for the benefit of Tribal people flies in the face of the government to government relationship and marginalizes the desires of Tribes to assist their membership meet educational goals. Justification to amend the P.L. 93-638 restriction is highlighted by the testimony below.

The Interior Department held several consultations that focused on Tribal involvement in the Land Buy Back Program. The initial Implementation Plan established ceiling amounts of funds for land purchases for each the 40 plus Indian Reservations with the most fractionated lands and Buy Back staff ‘opened the door’ for Tribal involvement to assist with any or all of the implementation tasks of Outreach, Land Research, Valuation and Acquisition. Tribes believed they could implement any of the four tasks and would receive a portion of the total amount of available administrative funds for the efforts. Tribes actually understood they could seek 15% of the ceiling amount for administrative efforts. However, the Buy Back Program, without Tribal consultation, moved forward with policy decisions that now limit Tribal involvement to primarily to the outreach task. While we have been attempting to determine appropriate tribal involvement, DOI has proceeded with internal processes to conduct land research, modify the National Title system to generate offers and establish an acquisition process. The result is that Tribes will actually only be involved in the Outreach tasks as DOI has moved forward with establishing processes for the other identified tasks which clearly further limits Tribal involvement in the implementation process.

The constant revisions and lack of clear guidance in the program leaves the Fort Peck Tribes and Tribes in Montana and Wyoming frustrated and disappointed that this rare opportunity for tribal land restoration may fall short of expending all land purchase funds within the mandated 10 year period. To avoid such a pitfall, Tribal support and Tribal participation is critical. Tribes can best advocate for the program and discuss in detail the drawbacks of fractionated land and the benefits of tribal land consolidation.

Cooperative Agreements

The Land Buy Back Program made a policy decision to utilize ‘cooperative agreements’ for Tribal participation in the program although ‘cooperative agreements’ are rarely utilized in Indian Affairs and have little regulatory guidance. DOI has developed an application process to obtain a cooperative agreement that consists of a Scope of Work Template (allows Tribes to specify tasks choose to undertake), a detailed Statement of Work narrative, and SF424 Forms to receive federal assistance. However, no guidance or parameters have been established for Tribes to conduct outreach efforts. Without parameters and formulas for funding, interested Tribes, including Fort Peck, have engaged in a guessing game with DOI to negotiate cooperative agreements.

Since I last testified on this subject in December before the Senate Indian Affairs Committee, we have been coordinating with a Tribal Relations Liaison, with the DOI Land Buy Back Program, located here in Washington, D.C. to submit a statement of work that meets the program requirements, without specific guidance on those requirements. The specific cost and equipment estimates required exceed the level of specificity for other contracts with the BIA. While we have had continuous discussions with Buy-Back Program staff, I am sorry to report that we still have no agreement on basic concepts such as the amount of funding, number of staff persons, and equipment needs to finalize a cooperative agreement. Our experience at Fort Peck is consistent with that of other Tribes in the Rocky Mountain Region and across large land based reservations. As of this date, a very small number of Tribes have achieved cooperative agreements to participate in implementation efforts despite interest and application from many Tribes.

The cooperative agreement negotiation process has been insulting to Fort Peck since I personally have worked in virtually every aspect of Indian land acquisition, primarily in local and regional real estate positions with the Bureau of Indian Affairs including the Deputy Superintendent of Trust Services at the Fort Peck Agency. Following federal service, I went to work for my Tribes as the Director of the Fort Peck Land Buy-Back program.

In a little over a year, our Tribes re-acquired over 10,000 acres of land on our Reservation using Tribal funds. We have the capacity, professionalism and familiarity with trust lands on Fort Peck Reservation to efficiently implement land purchases. Instead, we are wasting time and money with lengthy negotiations that have yielded no positive results.

The Buy-Back Program appears to benefit the federal government first, and Indian beneficiaries, in this case, Tribes second. That very notion is reminiscent of the federal Indian policies of yesterday: policies that resulted in the eradication of the American bison, the removal of Indian children, and the taking of Indian lands; policies that were intended to benefit the government in dealing with “the Indian problem.”

In addition to the above suggestions to revise the settlement and legislation, we suggest the following revisions of the current DOI policy determinations to improve the implementation of the Buy Back Program.

Recommendations

First, DOI must establish parameters for Cooperative Agreement funding for outreach efforts based on the size of the reservation, the numbers of landowners and amount of acreage in individual ownership. Funding must be proportional to specific outreach tasks appropriate for each particular reservation and not set at a flat \$500,000 per reservation as has been communicated to Fort Peck and other Tribes;

Second, the Department should immediately disclose Land Buy Back Program expenditures for administrative costs. DOI has provided no budget information for the new positions created, both at the DC level and in Acquisition centers, no information on the costs to enhance the Trust Accounting and Asset Management System (TAAMS) to implement Land Buy Back efforts and most importantly, the cost of valuation efforts. No information has been provided, and clearly no consultation attempted, regarding expenditures of the administrative funds. Further, DOI has not disclosed financial information on the status of program purchases with the amount expended in contrast to the established ceiling amounts to effectively determine willingness of individuals to sell interests. No information on the costs for the valuation processes has been disclosed. Full transparency is necessary to determine whether the established 15% administrative fee amount may need modification for full expenditure of the land purchase funds and to determine how unexpended purchase funds may be reallocated. At a minimum, the Department should provide quarterly reports to Congress and Indian tribes of its administrative expenditures, land buy back purchases and time-table to keep Congress and the tribes apprised of Department progress to expend the \$1.4 billion allocation in a timely manner;

Fourth, Tribal negotiations to obtain a cooperative agreement should occur at the Regional level of the Bureau of Indian Affairs utilizing personnel familiar with our reservations, our level of fractionated ownership and our Tribal governments. Working with the new Tribal Liaisons at the Central Office level of the DOI has been slow and ineffective.

Fifth, the Department should amend its arbitrary decision to limit the appraisal shelf-life to nine months. Appraisals should have a twelve month shelf-life and the possibility of a one-year extension consistent with current appraisals of trust. The limited shelf-life will likely result in additional costs to update outdated appraisals and will foreclose sending purchase offers out a second time if little success was achieved in the first round of purchase offers.

Sixth, Indian tribes, not appraisers, should determine which Reservation lands are purchasable in Land Buy Back Program. Presently, there is no individual consultation with Tribes before DOI determines which land interests are determined purchasable and non-purchasable. Tribes as the intended beneficiaries of the land purchases must be informed about the criteria to determine lands non-purchasable and have an opportunity for input on that determination. Congress should insist the BIA discontinue exercising overbroad authority and place decision making authority in the hands of elected tribal governments who are accountable to tribal members.

Seventh, DOI should disclose any valuation efforts, and the cost of those efforts, for mineral estates. DOI has stated that it has the capacity to render values for mineral estates but has provided vague and topical information on the process and the extent of actual valuation efforts. Instead, it appears that DOI is expending limited administrative

funds to review fractionated interests and “mineralize” those interests or determine that the mineral interest has development potential and must be excluded from the list of purchasable tracts. Excluding tracts that are “mineralized” will limit Buy Back Program success on numerous reservations including Fort Peck. DOI should allow landowners to reserve his/her mineral estates and sell the surface estates. Currently, the DOI policy for the Buy Back Program is to restrict separation of surface and mineral estates, which will deprive many individuals from participation in the Program.

Eighth, the Department should obtain the consent of the Tribal government before undertaking a reservation-wide appraisal, and provide results of appraisal activities to Tribes. Further, the appraisal process should be consistent with the Tribal government’s land use plans;

Ninth, the Buy Back Program has determined that Tribes must finance all efforts to apply for and negotiate a cooperative agreement, contrary to the established practices of start-up and pre-award allocations in other federal contract pursuits, primarily for P.L. 93-638 contracts. The application process has been burdensome and labor intensive. The Interior Department is expending Buy-Back funding setting up its own capacity to administer the Buy-Back Program. However, Tribes are precluded from reimbursement for precious Tribal resources that are expended the under Cooperative Agreement process. A revision of the policy to allow for start up and pre-award costs would facilitate a larger number of responsive applications.

Tenth, the DOI should reconsider policies that foreclose purchases at probate and the exclusion of fee lands to accomplish truly meaningful land restoration. Additionally, Tribes that have on-going land purchase activities could be reimbursed for those purchases for a cost effective expenditure of the land purchase funds.

Eleventh, in order to comply with Congressionally-mandated Indian Self-Determination policy, the Department should now engage in meaningful consultation with Tribes on the implementation schedule for the Buy Back Program, a budget for the Program, purchase-ceiling amounts, the mineral valuation and mass appraisal processes, for each Reservation.

Conclusion

Unless Congress acts now to require meaningful consultation, it appears that the Interior Department intends to use the Buy-Back Program as nothing more than a vehicle for closure of Individual Indian Money Accounts. Surely Congress intended more when it appropriated nearly two billion dollars to the Land Consolidation Fund.

As now contemplated, the Department’s Land Buy Back Program will have limited impact on the Fort Peck Indian Reservation. Under the Fort Peck Allotment Act, roughly two-thirds of the original 2.1 million acres of Tribal lands were allotted or

opened for Homesteading. Now, over half of our Reservation is held in fee simple status, mostly by non-Indians and such lands are excluded from the Buy Back Program. True land consolidation can occur on a Reservation like ours only if all interests including fee interests are purchased, including those interest that are no longer held in trust.

I will conclude by saying that while Congress struggles to find determine appropriate government funding levels, Indian Country is disparately affected. Conditions in Indian Country remain among the worst in the country. Indians continue to have the highest rates of unemployment, poverty, infant mortality, shorten life expectancy, diabetes, heart disease, chemical dependency, and suicide, to name a few. The list is long and must be reversed.

These conditions are a direct result of federal policies over the last two centuries; polices that promoted paternalistic treatment of Indians and a system of political patronage that was wholly inconsistent with the highest fiduciary obligations of the United States as our trustee. These policies, in many instances, were designed to advance well-being of non-Indians, to the detriment of the Indian population. One of those policies resulted in the loss of 90 million acres of Indian held lands. The Buy-Back Program cannot give full redress for that loss or its effects, but the Trust Land Consolidation Fund does have the potential to fulfill that to which its name aspires if implemented by the Interior Department in close partnership with Indian tribes.

Tribal governments are the ultimate beneficiaries of reducing fractionated trust parcels on reservations. To ensure that our land use goals are realized, the Department must consult with us. The BIA should expend the proceeds of the Buy-Back program only in a manner that reflects the needs of the Reservation community.

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