

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

LEGISLATIVE HEARING ON
INDIAN TRIBAL SELF-DETERMINATION ACT OF 2014
H.R. 5020

JULY 29, 2014

Good afternoon. Chairman Young, Congressman Daines and honorable members of the Subcommittee, my name Grant Stafne and I am a member of the Fort Peck Tribal Executive Board. I am honored to present testimony in support of HR 5020, the Indian Tribal Self-Determination Act of 2014 which will improve implementation of Tribal Nations Land Buy-Back Program 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 dollars to settle the long-standing Cobell litigation and benefit Indians. While the settlement designated specific uses of the funds in specific amounts, the funds were clearly awarded to benefit Indians and Indians should control the use of the funds within reasonable restrictions.

In addition to addressing Individual Indian Money accounting claims, and some mismanagement of underlying trust assets, the Cobell Settlement designated 1.9 billion dollars to purchase fractionated lands from individual Indians for restoration back to Tribes. The General Allotment Act and subsequent allotment acts diminished Tribal land bases and resulted in a loss of over 90 million acres of Tribal lands. Tribes have long sought remedies to prevent further erosion of reservation land bases through land purchase and land 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.

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 a process for implementation. Tribes responded and

expressed concerns 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 that would be managed by a non-profit organization rather than Tribes; 3) prohibiting Tribes from entering into P.L. 93-638 contracts for land buy back implementation; and finally 4) that Tribes were limited to providing a priority list of tracts for DOI purchase. 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 had been that neither the parties to the settlement or Congress was willing to reopen the settlement or the approving Legislation. However, H.R. 5020 is an effort to address some of the Tribal concerns, not through a revision of the settlement terms but through amendments to the applicable law for the Buy Back Program, the Indian Land Consolidation Act.

Tribal Involvement

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 also ‘opened the door’ for Tribal involvement to implementation the tasks of Outreach, Land Research, Valuation and Acquisition. Tribes believed they would receive up to 15% of the ceiling purchase amount for administrative efforts to undertake implementation tasks. However, the Buy Back Program made a policy decision to limit Tribal involvement to primarily the outreach task. While Tribes continued to pursue expanded tribal involvement, DOI proceeded with land research efforts, with

modification of the National Title system to generate offers and to establish an acquisition process. The result is that Tribal involvement and decision-making in the implementation process has been seriously limited.

H.R. 5020 amends the Indian Land Consolidation Act to allow the Secretary to enter into contracts pursuant to the Indian Self Determination and Education Assistance Act (ISDA) of 1974 (P.L. 93-638 codified at 25 U.S.C. 450 et. seq.). This amendment mandates that the Secretary shall enter into an ISDA contract or a cooperative agreement upon a Tribe's request to implement non-trust tasks of the Tribal Nations Land Buy Back Program. This amendment greatly expands tribal involvement beyond the initial prioritization of tracts and would allow Tribal control over which lands are purchased and allow Tribal access to administrative funds.

The current Buy Back Program requires Tribes to 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 for a cooperative agreement has been burdensome and labor intensive due to the lack of parameters and budget provisions for each of the implementation tasks. While, the Interior Department is expending Buy-Back administrative funding for its own capacity to administer the Buy-Back Program, Tribes are precluded from reimbursement for precious Tribal resources expended to negotiate a Cooperative Agreement. Revising the current cooperative agreement process to ISDA contracts would provide Tribes with start up and pre-award costs which would facilitate a larger number of participating Tribes.

Further, Tribes are familiar with the comprehensive set of federal regulations at 25 CFR Part 900 that include reporting and compliance mandates. Without question, allowing Tribes to implement the non-trust tasks of the Buy Back program will expedite the overall implementation of the program.

Tribal Implementation of Non Trust Tasks

The Buy Back program has identified four major tasks to implement purchases of fractionated lands from willing sellers including Outreach, Land Research, Valuation and Acquisition. Of these identified major tasks, inherent trust functions would include federal approval of a final appraisal of trust lands identified for purchase and the conveyance of title from the individual Indian landowner to the Tribe. All other tasks are non-trust tasks that are clearly appropriate for Tribal implementation.

To fully implement ISDA contracts with Tribes for the non-trust tasks, DOI should utilize the purchase ceiling established for each Tribe and develop budget parameters for each major implementation task with the 15% administrative cost limitation as guidance. For example, if a certain amount of funds are designated for outreach for a certain Tribe, that Tribe would determine the most effective and appropriate outreach efforts within the budget restriction.

Tribes have expressed concerns about the lack of transparency with current DOI land research and valuation processes. DOI has proceeded with a mass appraisal process that utilizes comparable land sales. However, the cost of this appraisal method is unknown. Further, this method identifies a considerable number of tracts with improvements that are designated non-purchasable regardless of the nature of the

improvement. I recommend that DOI establish budget amounts to conduct land research and valuation on each reservation which would assist a Tribe to decide whether or not to undertake implementation of the tasks. Tribal implementation of land research and valuation could expedite these processes and insure a greater number of tracts are identified as purchasable.

DOI has developed an automated notice and purchase offer process as well as an automated title update process that has streamlined the acquisition process. Further, upon the return of an offer package, DOI processes insure the selling landowner receives the sale proceeds within a matter of days. These processes appear efficient and cost effective and I would not recommend revising them at this time.

Tribal Capacity

The Assiniboine and Sioux Tribes, like most large land based Tribes in the Rocky Mountain and Great Plains regions, have well established land buy-back programs and land consolidation plans. In a little over a year, the Fort Peck 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. Tribes will be the best source to identify unique attributes of reservation lands including physical features, cultural and historic sites and must be the final decision-maker regarding the acquisition of these lands. An ISDA contract will facilitate Tribal decision-making authority for lands within its jurisdictional boundaries acquired in the Buy-Back program.

Further, Tribes are best able to communicate the benefits of land consolidation to our Tribal members which will be critical for the success of the Buy Back Program. As of this date, under DOI management with limited Tribal involvement, DOI has spent approximately \$60 million of the total 1.4 billion allocated for land purchases. Less than ten (10) cooperative agreements have been finalized with Tribes for limited participation in the implementation of the Buy Back program. Currently, DOI intends to implement the program on only a handful of reservations per year due to its singular reservation or area approach, primarily for valuation efforts. This implementation process raises serious concerns that the program will be unable to expend the total amount of funding within the mandated 10 year period. Simultaneous Tribal implementation, via ISDA contracts, will expedite the expenditure of the purchase funds and insure that no funds are returned to the Treasury.

Extension of Time and Investment of Administrative Funds

The Fort Peck Tribes support an extension of time to implement the Buy Back program from 10 years to 15 years. Without this extension of time, a possibility exists that a portion of these settlement funds will be returned to Treasury. Clearly, a return of the funds would be inconsistent with the intent of the settlement to benefit Indians.

The Fort Peck Tribes further support the investment of implementation funds in interest bearing accounts and the authority to utilize interest funds to enhance fractionated land purchases. This provision will maximize the benefits of the Land Buy-Back funds.

Recommendations

First, DOI must establish budget parameters to negotiate ISDA contracts or cooperative agreements based on the size of each reservation, the numbers of landowners and amount of acreage in individual ownership. Funding must be proportionate to specific tasks for each particular reservation and should not be a flat \$500,000 per reservation as has been the current standard;

Second, full information on the costs for the valuation processes must be 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;

Third, Tribal negotiations to obtain an ISDA contract or 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.

Fourth, 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.

Fifth, 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 tracts of land are purchasable and non-purchasable. An ISDA contract prior to valuation efforts would allow for Tribal input on the determination of purchasable and non-purchasable tracts.

Sixth, 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.

Seventh, DOI should allow landowners to reserve his/her mineral estates and sell the surface estates on tracts where the landowner owns both 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. Further, Tribal acquisition of surface only interests will enhance tribal management authority for mineral development, lease administration and economic development.

Conclusion

The Fort Peck Tribes recently finalized a cooperative agreement with DOI for outreach efforts for implementation of the Buy Back program on the Fort Peck Reservation after several months of costly and cumbersome negotiations. This cooperative agreement was achieved despite no specific guidelines or parameters on the implementation tasks. The final award to the Fort Peck Tribes for outreach efforts was less than 1% of the total ceiling purchase amount for fractionated lands on our reservation.

The Fort Peck Tribes pursued and accepted the cooperative agreement to insure 1) that the program would be implemented at Fort Peck and that our landowners would have the opportunity to sell fractionated interests, 2) that the Tribes would conduct outreach and inform landowners of the program rather than have the program implemented without any Tribal involvement, and 3) that the Tribe takes advantage of any opportunity for land consolidation for Tribal purposes including economic development.

While we have a finalized cooperative agreement with DOI, we support H.R. 5020 and are hopeful that upon its passage, the Fort Peck Tribes will have the opportunity to replace the cooperative agreement with an ISDA contract.

Tribal governments are the ultimate beneficiaries of reducing fractionated trust parcels on reservations. We commend the leadership of this committee to pursue legislation to improve the Tribal Nations Land Buy Back program and to empower Tribes through ISDA contracts.

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