

**Testimony of Gary Burke, Chairman, Board of Trustees  
Confederated Tribes of the Umatilla Indian Reservation before  
The House Committee on Natural Resources  
Subcommittee on Indian and Alaska Native Affairs Hearing on  
*Implementing the Cobell Settlement: Missed Opportunities and Lessons Learned***

**April 3, 2014**

Good Afternoon Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, 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 implementation of the Land Buy-Back Program under the Cobell settlement. My Tribe views the Land Buy-Back Program 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 aboriginal 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 Land Buy-Back Program will play 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 the Reservation established under our Treaty. The 1885 law diminished the Reservation by opening up some 90,000 acres of Reservation land for sale to settlers. The allotment of our Reservation under the 1885 law resulted in the loss of approximately one-half of Tribal lands within the diminished Reservation to non-Indian ownership due to probate, sale and tax foreclosure. When we celebrated the 100<sup>th</sup> anniversary of our Treaty in 1955, the Reservation established by our Treaty had been largely lost to non-Indian ownership. Of the original Treaty Reservation of 250,000 acres, 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 Land Buy-Back Program, the Umatilla Indian Reservation is the 28<sup>th</sup> 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, because of the large number of landowners and the difficulty in contacting and securing the consent of those landowners for a particular use. 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.

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 Land Buy-Back Program 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 Land Buy-Back Program. These prioritized allotments are heavily fractionated, have a large percentage of ownership by Indians enrolled in tribes outside of our own, or otherwise have important cultural, natural resource or economic and community development significance.

The CTUIR is well prepared to participate in the implementation of the Land Buy-Back Program on our Reservation. The experience and expertise of our Tribal Land Program, which had led the Tribal effort to restore our Reservation land base over the past thirty years, is critical to the success of each phase of the Land Buy-Back Program. The success of our Tribal Land Program can be quantified: we have acquired 42,000 acres in 740 land transactions at a cost of some \$23 million. The CTUIR has also compacted the realty and appraisal functions from the BIA. Our Tribal GIS staff have extensively mapped our Reservation, including Reservation allotments. Most importantly, our Tribal staff know and have dealt with our Reservation lands and their landowners, which will be essential to the success of the Land Buy-Back Program on our Reservation.

The CTUIR is anxious to have the Land Buy-Back Program implemented on our Reservation. We have been working diligently for more than a year to develop a plan for Tribal participation in the outreach, land research, land valuation and acquisition phases of the Land Buy-Back Program. For the past six months, we have been negotiating for a Cooperative Agreement with the Land Buy-Back Program that defines and funds the work we would perform to implement the Program. While we are frustrated at how slow the process has been, we believe we are getting close to finalizing our Cooperative Agreement.

Based on our experience, we urge the Land Buy-Back Program to address these problem areas:

1. 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, 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 Land Buy-Back Program reimburse our acquisitions under this Code dating back to the federal court approval of the Cobell settlement in November 2012. To date, the Land Buy-Back Program has not agreed to this request. The CTUIR believes our request should be granted because these probate acquisitions achieve the objectives of the Land Buy-Back Program by

acquiring fractionated interest in trust lands and transferring ownership to the Tribe at fair market value as determined by the Department of Interior.

2. The Land Buy-Back Program needs to ensure that it provides adequate contract support costs as a component of the grants to tribes for the implementation of the Program. As the Subcommittee is aware, this has been an issue that the U.S. Supreme Court has addressed in the *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), holding that the United States had a contractual obligation to pay full contract support costs under the Indian Self-Determination and Educational Assistance Act, 25 U.S.C. §450 et seq. To date, the Land Buy-Back Program has taken the position that it can only pay contract support costs in the amount of 15% of the Tribal grant under a Cooperative Agreement. We have also been informed that we will not receive any contract support funding for grant funds that are used to pay subcontractors or to acquire equipment. While we are mindful of, and support, the Cobell settlement 15% cap on administrative costs under the Land Buy-Back Program, the Land Buy-Back Program position on paying Tribal administrative costs to implement the Land Buy-Back Program is too restrictive. We have proposed, and to date, the Land Buy-Back Program has not accepted, that the Tribe receive administrative costs in the amount of 15% of its total grant. We believe our proposal would provide Tribes sufficient contract support costs funding to carry out Land Buy-Back Program functions and be consistent with the 15% administrative expenses cap contained in the Cobell settlement.
3. The Land Buy-Back Program needs to provide more information to affected Tribes on the roll-out of the Program in Indian Country. It would be helpful to us to learn about what has worked, what has underperformed and what has failed in the implementation of the Land Buy-Back Program on other reservations. It's equally important that we receive information about the rate of acceptance of offers to purchase made to Indian landowners under the Land Buy-Back Program. The CTUIR, and other participating tribes have a shared interest with the Land Buy-Back Program in the success of the Program. The CTUIR wants to learn from, and benefit by, the successes (and the failures) of other tribes participating in the Land Buy-Back Program.
4. The Department of Interior needs to commit the necessary personnel to ensure the timely implementation of the Land Buy-Back Program. We have particular concerns regarding the time associated with the review and approval of our appraisals of the fractionated trust allotments that we have prioritized for purchase under the Land Buy-Back Program. These reviews will be conducted by the Office of Appraisal Services (OAS). The CTUIR has proposed to conduct appraisals and have offer letters sent out on the 400 allotments we have prioritized for purchase in three waves: the first and second wave will involve 150 allotments and the third wave will be of 100 allotments. The timing for our 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.

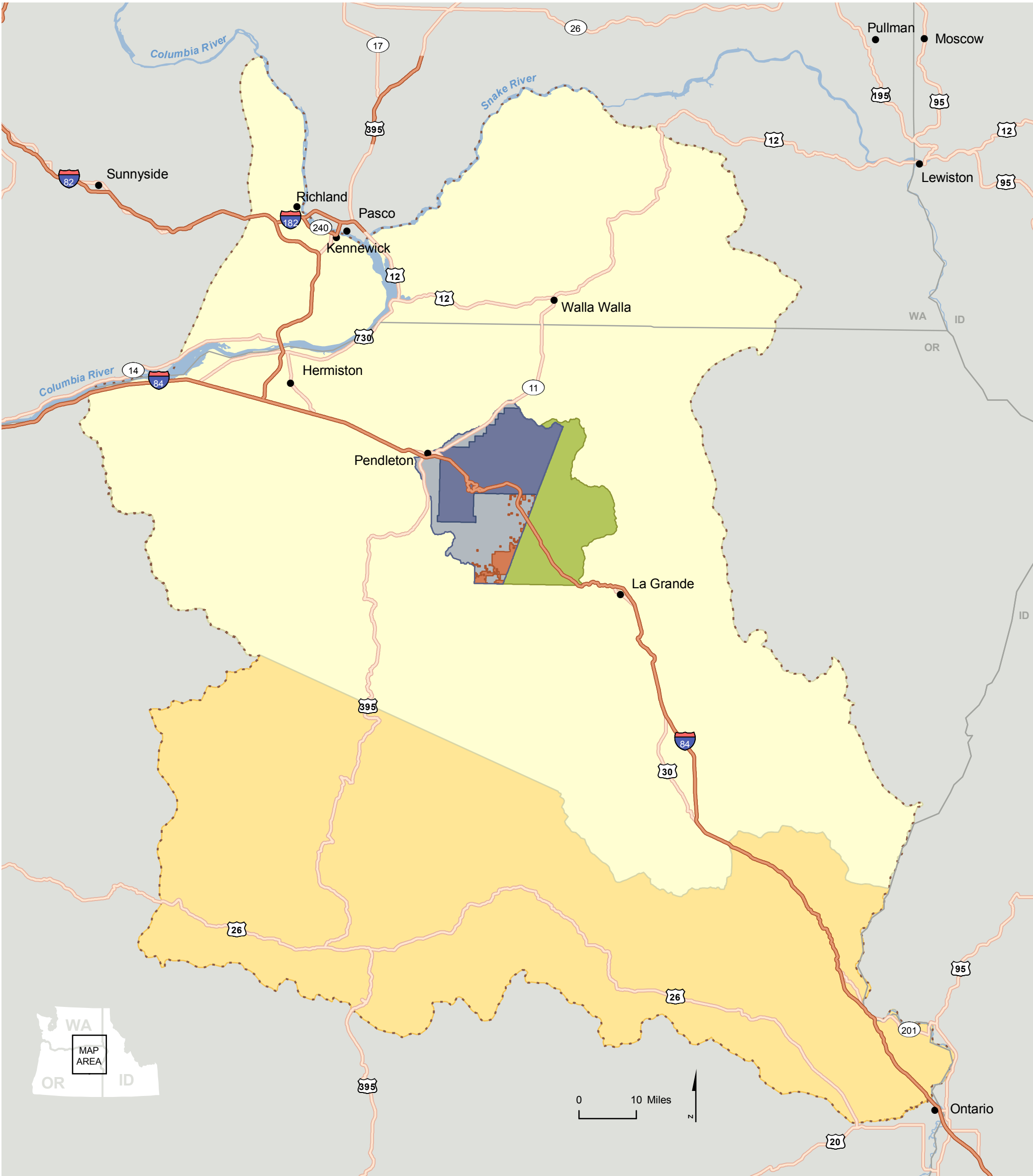
Since Congressional approval of the Cobell settlement in the Claims Resolution Act in 2010, the CTUIR has focused on the Land Buy-Back Program to consolidate Tribal ownership of heavily fractionated allotments and to restore CTUIR ownership to those allotments. Our staff have worked diligently with Interior Department and Land Buy-Back Program officials to prepare for our participation in the implementation of the Land Buy-Back Program on our Reservation. Once we finalize our Cooperative Agreement and the associated Scope of Work, we are prepared to begin outreach to Indian landowners, to appraise the prioritized allotments and to assist in the acquisition of these fractionated interests. With increased Tribal ownership of these 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 Land Buy-Back Program 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 Land Buy-Back Program is a small but important step by the United States to honor our Treaty and to reverse the failed allotment policy of the 19<sup>th</sup> century. Consistent with current federal Indian policy, the successful implementation of the Land Buy-Back Program can improve Tribal self-determination and self-sufficiency by reducing fractionated ownership of Reservation lands and thereby increasing the ability of Tribes to make beneficial use of those lands.

This completes my testimony. Once again, on behalf of the CTUIR, I appreciate the opportunity to provide our perspectives on the Land Buy-Back Program. We look forward to working with the Subcommittee and the Land Buy-Back Program to ensure its success on our Reservation.

# Tribal Lands: Historical Boundaries

The Confederated Tribes of the Umatilla Indian Reservation



- Surveyed Treaty Boundary:** In 1871, the Reservation Boundary was surveyed for the federal government. Although the Treaty of 1855 described an area of 500,000 acres, this boundary contains only approximately 245,000 acres.
- Eastern Treaty Boundary:** This boundary contains an additional 230,000 acres excluded from the reservation during the Reservation Survey of 1871.
- Diminished Reservation:** The Umatilla Allotment Act (Slater Act) of 1885 authorized the allotment and diminishment of the reservation to 120,000 acres. Land was allotted to individual Indian families.
- Johnson Creek Restoration:** In 1939, a Congressional act authorizes the Secretary of Interior to restore to the Umatilla Indian Reservation 14,000 acres of Federal lands.
- Ceded Lands (as identified by Royce in 1897):** This area displays lands ceded to the United States in the Treaty of 1855, based on an 1897 Royce interpretation.
- Additional Ceded Lands:** As adjudicated in CTUIR v. Maison II (1960) and CTUIR v. Maison III (1966).
- Aboriginal Title Lands:** This boundary identifies lands owned and occupied by right of aboriginal possession by a tribe for an extended period of time immediately prior to treaty making. In 1960 and 1966, the U.S. District Court for Oregon explicitly described this boundary, and reaffirmed the exclusive rights of Tribal members for hunting, fishing and gathering within this boundary. (CTUIR v. Maison II & CTUIR v. Maison III).