

**EXAMINING THE OPPORTUNITIES
AND CHALLENGES OF LAND
CONSOLIDATION IN
INDIAN COUNTRY**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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**OVERSIGHT HEARING ON EXAMINING THE
OPPORTUNITIES AND CHALLENGES OF
LAND CONSOLIDATION IN INDIAN COUNTRY**

**Tuesday, January 30, 2024
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10:15 a.m., in Room 1324, Longworth House Office Building, Hon. Harriet M. Hageman, [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, LaMalfa; and Leger Fernández.

Also present: Representative Johnson.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order.

Without objection, the Chair is authorized to declare recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on Examining the Opportunities and Challenges of Land Consolidation in Indian Country.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I, therefore, ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o). Without objection, so ordered.

I will now recognize myself for an opening statement.

STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. The purpose of today's hearing is to hear from tribal leaders, and originally from the Bureau of Indian Affairs, about land fractionation, land consolidation, and the challenges that Indian tribes and individual Indian landowners face as a result.

Land fractionation is the result of the policies implemented by the Federal Government for American Indians during what we refer to as the Allotment Period. Beginning with the General Allotment Act of 1887, the Federal Government divided tribal lands into 80- or 160-acre sections to be allotted to individual tribal members. Any land not allotted was sold off, which resulted in approximately 90 million acres of Indian land being removed from Indian ownership and control. Congress formally ended and repudiated the failed policy of allotment with the Indian Reorganization Act in 1934, but the impacts are still felt today.

Because individual Indian allotments initially followed state laws for inheritance, property interest in individually allotted lands were inherited by multiple heirs. When the original tribal owners died in testate, that is, without a will, the ownership of the land was divided equally amongst their heirs. But the physical land itself was not divided, resulting in co-ownership of the land between those heirs.

As time passes and more generations die without writing wills, the number of co-owners with a fractionated interest increases exponentially. Many of the fractionated interest owners only have a small fraction of a claim to the land that they own. To put this into perspective, if a parcel of land earns \$100 for grazing purposes, and an individual interest owner has a 2 percent claim for that land, they would only receive \$2.

In 2018, after implementation of the Land Buy-Back Program, the Department of the Interior estimated that there were 243,000 landowners who owned nearly 2.5 million interests in 100,000 fractionated parcels.

As this Subcommittee has explored in previous hearings, barriers to land use and the development of land in Indian Country frequently discourage economic development and investment. Fractionated lands are another barrier to development because generally a majority interest is needed to make land use decisions.

If an allotment has 50 or 100 co-owners, it can be unaffordable and logistically prohibitive to gain a majority interest agreement for land use. As a result, adjacent tribally-controlled land can remain undeveloped, and individual Indian landowners do not receive the benefits.

Congress has attempted to address Indian land fractionation in multiple ways, through providing pathways for tribes to consolidate lands, creating and reforming the probate process for Native Americans, and also creating land buy-back programs to purchase fractionated interests from willing sellers, the largest of which was the Land Buy-Back Program that was part of the Cobell v. Salazar Settlement.

The Cobell Settlement was negotiated by the Obama administration and funded through congressional legislation. \$1.9 billion was set aside from the \$3.4 billion settlement to make a concerted effort to resolve fractionation through a 10-year voluntary Land Buy-Back Program. It has not been as successful as we had hoped.

The Buy-Back Program conducted consolidation actions from 2012 to 2022 and sent offers to 63,763 individual Indian landowners in 53 different locations. Ultimately, \$1.69 billion was paid out to Indian landowners, increasing or creating tribal ownership in over 51,000 tracts of land, with 1,916 tracts reaching 100 percent tribal trust ownership.

While this program made some progress in reducing land fractionation, the Department of the Interior's own final report included two statistics that I would like to highlight today. The program identified more than 2.9 million purchasable fractional interests, and after the program now there are still 2.4 million purchasable fractionable interests remaining. And even with the concerted 10-year efforts of the Buy-Back Program, without further

action the rate of fractionization will bypass pre-Buy-Back Program levels in just 14 years.

It is obvious that funding massive buy-back programs is not the be all and end all in ending land fractionization. We have to do better for Indian Country.

There are further policy-focused opportunities to reduce land fractionation and purchase consolidation within Indian reservations. This hearing today will have our witnesses talk about their experiences with the Land Buy-Back Program and what other efforts tribes, organizations, and individual Indian landowners are taking to prevent further fractionization of land interests.

We can all work towards cohesive, interrelated solutions to prevent further fractionization and advocate for informed land management. This hearing continues this conversation that has been happening now for decades. I want to thank the witnesses for being with us today. I look forward to your testimony.

The Chair now recognizes the Ranking Minority Member for her statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Thank you, and good morning, everyone. And thank you to our witnesses for joining us today.

I want to begin today perhaps slightly different. Yesterday, we lost N. Scott Momaday. He died in his home in Santa Fe, New Mexico. As you all know, his novel “House of Dawn” won the Pulitzer Prize in 1969 and is largely credited with igniting a wave of modern Native American literature.

Mr. Momaday once said, “Our very existence consists in our imagination of ourselves.” He showed us the power of storytelling and oral tradition, bringing imagination to life. He also spoke of the importance of the land and the importance of his peoples and his imagination entwined within the land.

He reminded us that we must have a deep ethical regard for the land. We had better learn from it. Surely, that ethic is merely latent in ourselves. It must now be activated, I believe. We Americans must come again to a moral comprehension of earth and air. We must live according to the principle of a land ethic. The alternative is that we shall not live at all.

I think that this poet’s words ring true today as we think about how do we best allow and help Native Americans regain the land and regain full interest in the land that is theirs, because today we are discussing the critical importance of the United States’ trust responsibility to tribes when it comes to managing lands and the issues facing land fractionation.

We know that land fractionation is a direct result of the devastated and misguided allotment in the assimilation period of the late 19th and early 20th century. The General Allotment Act of 1887 was a keystone of those failed policies. I remember clearly the maps that we have all seen as the land that was once tribal and just shrinks, and shrinks, and shrinks over time.

It dictated that law, the forced conversion of communally-held tribal lands into separate 80- and 160-acre parcels. Fractionation

happens when someone passes away, and little by little that land is so deeply fractionated. It is difficult to manage and difficult to own.

The Cobell Settlement agreement in 2010 was one of the most significant results of the Department of the Interior land acquisition programs. The purpose of the settlement was to resolve a class action lawsuit regarding the Federal Government's accounting and management of over 300 individual Indian trust accounts.

Part of that was the creation of the \$1.9 billion Trust Land Consolidation Fund to permit DOI to purchase at fair market value lands of fractionated ownership from willing individual Indian trust beneficiaries.

The Land Buy-Back Program ran from 2012 to 2022. In these 10 years, tribal ownership increased by 2.97 million acres across 53 locations. While we must recognize that this wasn't enough, it was something. With increased land consolidation, tribes can exercise tribal sovereignty and self-determination over their lands that better suit their community's leads. They can actually carry out that land ethic that Momaday calls us to.

The Land Buy-Back Program took significant steps to correct misguided policies, and tribes have seen the benefits. However, land fractionation continues to be a significant issue. After the program expired in 2022, approximately 2.4 million fractionated areas remained at 150 locations. That is 5.6 million acres with an estimated value of several billion dollars. The BIA estimates that as of Fiscal Year 2023 it had a backlog of more than 32,000 inheritance cases for these lands.

BIA's 2024 budget requested \$30.5 million to hire 22 staff to continue the land consolidation efforts and purchase fractional interests at an additional five locations. In Fiscal Year 2023, they only received \$8 million—\$8 million—when the request was \$30.5 million, and we know we needed so much more.

Giving tribes more control and sovereignty over the lands will continue to be a priority of mine on this Committee, and it needs to be for the entire Congress. I know the tribes here today are going to go into more detail about their experiences with the Land Buy-Back Program, and I look forward to hearing from you on this issue and on ways in which we can make it better and continue our progress to a land ethic.

Thank you.

Ms. HAGEMAN. Thank you.

I will now introduce our witnesses for our panel. We had anticipated that Director LaCounte would be testifying this morning on behalf of the Bureau of Indian Affairs. However, we were informed this morning that he is ill and unable to attend. And while I definitely hope that he gets better soon, I will state that I am disappointed in BIA's absence, as their involvement in these discussions is critical to finding workable solutions. So, hopefully we will have the opportunity to engage them before much more time passes.

First, the Honorable Marvin Weatherwax, Councilman, Blackfeet Tribal Business Council, Browning, Montana; the Honorable Ryman LeBeau, Chairman, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota, thank you for coming back; the Honorable

Victoria Kitcheyan, Chairwoman, Winnebago Tribe of Nebraska, Winnebago, Nebraska, again, thank you for being in front of our Committee again today; and Mr. Cris Stainbrook, President, Indian Land Tenure Foundation, Little Canada, Minnesota. Thank you all for joining us.

I would like to remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the “talk” button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. At the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement. I will also allow all witnesses on the panel to testify before we begin with our Member questioning.

The Chair now recognizes the Honorable Marvin Weatherwax for 5 minutes.

**STATEMENT OF THE HONORABLE MARVIN WEATHERWAX,
COUNCILMAN, BLACKFEET TRIBAL BUSINESS COUNCIL,
BROWNING, MONTANA**

Mr. WEATHERWAX. Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Marvin Weatherwax, Jr. I am a member of the Blackfeet Tribal Business Council and serve as the Chairman of the Coalition of Large Tribes.

Our original reservation spanned from the eastern front of the Rocky Mountains to the eastern borders of Montana, from the Yellowstone River on the south to the northern border with Alberta, Canada. But our land losses were staggering for more than a century.

The failed Federal assimilationist allotment policy resulted in the loss of many millions of acres of land across Indian Country and hundreds of acres across our reservation alone. During the starvation winter of 1883, our chiefs were forced to cede 130,000 acres to receive rations. In 1911, we were subjected to the Blackfeet allotment where another 156,000 acres were sold as surplus to non-Indians.

By 2012, when the Land Buy-Back Program was established, we had lost 90 percent of our original reservation and had the third highest amount of fractionated land in the United States, making use and management of these lands difficult, and in many cases impossible, because of the large number of landowners, often hundreds of owners per parcel, and the resultant difficulty in conducting and securing the consent of those landowners for particular use.

To prevent further loss of lands, we enacted a right of first refusal ordinance for on-reservation land sales, which has allowed us to receive notice of opportunities for land reacquisition so we can move quickly to engage with landowners.

We have mapped our reservation, so we have data that helps us make informed decisions. We devoted extensive efforts to community engagement and earned the confidence of reservation landowners. Both from our own efforts and with the resources of

the Land Buy-Back Program, the Blackfeet Tribe has consolidated more than 190,000 fractional interests and more than 490,000 equivalent acres in more than 14,000 transactions.

Based on the Blackfeet Tribe's experience, I have four recommendations. First, we would like to see more flexibility in use for the program monies. Second, we would like to see more and better BIA investment in technology. Third, the Land Buy-Back Program should be expanded to other categories of land.

In sum, we need maximum flexibility in the Land Buy-Back Program, namely distribution of monies directly to the tribes to use as we see fit each year in one block grant with a single audit.

And, lastly, Congress should direct enforcement of Federal land reacquisition statutes that are already on the books.

Without dramatic funding, we will soon be worse off than we were pre-Cobell, of the incessant proliferation of land fractionation. In Fiscal Year 2023, DOI requested \$80 million for land buy-back and got \$8 million. In Fiscal Year 2024, OMB limited DOI's ask to \$8 million. These dribs and drabs are insufficient to meet the need. Funding of land buy-back programs should be tailored to what is needed to actually achieve the objective, not keep us on the hamster wheel of the same number as last year.

I thank you very much.

[The prepared statement of Mr. Weatherwax follows:]

PREPARED STATEMENT OF THE HON. MARVIN WEATHERWAX, JR., MEMBER OF THE
BLACKFEET TRIBAL BUSINESS COUNCIL

Good morning, Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee. My name is Marvin Weatherwax Jr. and I am a member of the Blackfeet Tribal Business Council. I also serve as Chairman of the Coalition of Large Tribes (COLT), and as a Representative of District 15 in the Montana Legislature.

I appreciate the opportunity to provide testimony on the implementation of the Land Buy-Back Program. My Blackfeet Tribe views the Program as an important tool to restore Blackfeet ownership of Reservation lands. Our Tribe has enacted laws to maximize the utility of monies available under the program and devoted our own resources separately to land reacquisition as part of our broader efforts to restore as much land as possible from our 1855 Treaty to Tribal ownership and control. We believe removal of current bureaucratic impediments is central to achieving the goals of the Land Buy Back Program.

Our story mirrors that of other large land base tribes. The original Treaty Reservation spanned from the eastern front of the Rocky Mountains to the eastern border of Montana and from the Yellowstone River on the South all the way to Northern border with Alberta, Canada. But our land losses were staggering for more than a century. The failed federal assimilationist allotment policy resulted in the loss of many millions of acres of lands across Indian Country, and hundreds of thousands of acres across the Blackfeet Reservation alone. During the starvation winter of 1883, our Chiefs were forced to sign another treaty to receive rations in exchange for 130,000 acres of land that was to be given to the U.S. Forest Service. In 1911, the Blackfeet were subjected to the "Blackfeet Allotment" where another 156,000 acres were sold as "surplus" to non-Indians.

By 2012, when the Land Buy-Back Program was established, the Blackfeet Tribe had lost 90% of our original Reservation and had the third highest amount of fractionated land in the United States, making use and management of these lands difficult, and in many cases impossible, because of the large number of landowners—often hundreds of owners per parcel—and the resultant difficulty in contacting and securing the consent of those landowners for a particular use. A large percentage of the fractionated interest owners are Indians that are not enrolled in our Tribe, but instead are members of other tribes, which makes land use and management decisions even more complex.

For the past three decades, well before the birth of the Land Buy-Back Program, the Blackfeet Tribe 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 boundaries. To prevent further loss of lands, we enacted a “right of first of refusal” ordinance for on-Reservation land sales which has allowed us to receive notice of opportunities for land reacquisition so we can move quickly to engage with landowners.

Our Tribal GIS staff have extensively mapped our Reservation, including allotments so we have data that helps us make informed decisions. Most importantly, our Tribal staff devoted extensive efforts to community engagement to earn the confidence of Reservation landowners.

Both from our own efforts and with the resources of the Land Buy-Back Program, over the last decade, the Blackfeet Tribe has been successful in the consolidation of more than 196,000 fractional interests and more than 490,00 equivalent acres in more than 14,000 land transactions.

Based on the Blackfeet Tribe’s experience, I have four concrete recommendations that would make the Program more successful without additional funding, although I note that additional funding is needed and warmly welcomed:

1. First, we would like to see more flexibility in uses for Program monies. The Land Buy-Back Program is a narrow but effective tool that provides a means to restore Tribal ownership of fractionated interests in Trust allotments. The Blackfeet Tribe, like other large land base tribes, has developed a Land Department and has charged it with the management of land and resources. The Blackfeet Tribe would like to be able to utilize Program funding to support the Land Department as it continues to grow in ways to support the agri-businesses of the Tribe and Tribal members; to implement the HEARTH Act for expansion of on-Reservation housing stock; and to track and process data relating to fractionated interest holders, GPS, land use, water rights, precipitation, sunlight, leases, and rights-of-ways management. The flexibility would not create additional costs.
2. Second, we would like to see more and better BIA investments in technology. The Bureau utilizes an antiquated and ineffective system to manage land. Our Tribe and others are utilizing and creating innovative and cutting-edge technology to better manage the tribal land and resources. Our landowner engagement has been effective because we have “reinvented the wheel,” by recreating federal data to which we are denied access (TAAMS). But our Land Department needs training, hardware, software and planning to achieve both short-term and long-term goals, and we need ready access to federal land management systems’ data. This flexibility would not create additional costs.
3. Third, Land Buy-Back Program expanded to other categories of land, such as in the Blackfeet Tribe’s case, lands alienated in the Blackfeet Allotment Act of 1911. By allowing Land Buy-Back funds to be used to acquire lands beyond “fractionated interests,” the true meaning “Land Buy Back” can be fulfilled. Our land losses took many forms and the Land Buy-Back monies should have maximum flexibility to allow for reacquisition of any lands alienated from original Treaty boundaries. Again, this flexibility would not create additional costs.
4. Lastly, Congress should direct the Department of the Interior to enforce other federal land reacquisition statutes that are already on the books. For example, the Indian appropriation act of September 21, 1922,¹ provides:

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to issue a patent to the duly authorized missionary board, or other proper authority, of any religious organization engaged in mission or school work on any Indian reservation for such lands thereon as have been heretofore set apart to and are now being actually and beneficially used and occupied by such organization solely for mission or school purposes, the area so patented to not exceed one hundred and sixty acres to any one organization at any station: **Provided, that such patent shall provide that when no longer used for mission or school purposes said lands shall revert to the Indian owners.** (Emphasis supplied). The 1922 Act placed restrictions of fee patents associated with Indian Boarding Schools in direct response to abuses by churches whereby they were acquiring fee patents to many thousands of acres of reservation lands far in

¹ 42 Stat., 994, 995 (“1922 Act”).

excess of any education needs and they were likewise using the Indian Boarding Schools as otherwise illegal child/slave labor under abhorrent conditions. The 1922 Act requires the return of thousands of acres of land to tribes right now. Statutes like the 1922 Act are a ready supplement to the Land Buy-Back Program and their enforcement would bolster reservation economies and likely provide other important health and education benefits—all without any additional funding.

On behalf of the Blackfeet Tribe, I appreciate the opportunity to provide our perspectives on the Land Buy-Back Program. We look forward to working with the Subcommittee and any Administration to ensure its continued and greater success on our Reservation and for other large land base tribes.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. MARVIN WEATHERWAX,
COUNCILMAN, BLACKFEET TRIBAL BUSINESS COUNCIL

The Honorable Marvin Weatherwax did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. In your testimony, it was mentioned that the Blackfeet Nation has utilized innovative technology when it comes to land management including mapping alternatives.

1a) Would it be useful to have regional organizations collaborate on land management?

1b) How can Congress help to support tribal land offices to have access to data and maps from the Department of the Interior?

Question 2. Could you expand on how denied access to TAAMS has hindered land management practices for the Blackfeet Nation?

Question 3. In your opinion, how good of a job did the Land Buy-Back Program do in targeting lands that had a high economic value to consolidate?

Question 4. How has your tribe approached long-term land use planning?

4a) How has fractionation and land consolidation impacted the effectiveness of long-term use planning?

Question 5. The Department created GIS maps and a database for use in the Land Buy-Back Program and has stated that tribes have access to that data to see the lands and help make land planning decisions.

5a) Does the Blackfeet Nation use this data specifically. And if yes, how accessible is this data? And if no, please explain why not.

Question 6. The Land Buy Back Report acknowledges that land fractionation will exceed pre-program levels in 14 years without further action.

6a) Can you further expand from your testimony on any legislative or policy solutions that Congress should consider to help further consolidate fractional interests?

Ms. HAGEMAN. Thank you for your testimony.

The Chair now recognizes the Honorable Ryman LeBeau for 5 minutes.

STATEMENT OF THE HONORABLE RYMAN LEBEAU, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SOUTH DAKOTA

Mr. LEBEAU. [Speaking Native language.] I said I shake your hand with a good heart, and we thank you for allowing us this time.

Chair Hageman, and members of the Committee, I am Ryman LeBeau, the Chairman of the Cheyenne River Sioux Tribe. I am here for my Lakota people.

The Cheyenne River Reservation is 2.8 million acres in north-central South Dakota along the Cheyenne, Moreau, and Missouri Rivers. We are the fourth largest reservation in Indian Country. The Cheyenne River Sioux Tribe is four bands of the Lakota, and these four bands are the Miniconjou, the Itazipcho, Sihasapa, Oohenunpa. We are one of the great Sioux Nation Tribes, or as we say the [Speaking Native language], the seven council fires.

In general, we allocate grazing units and farms to our tribal members for agriculture development. Grazing units are typically 1,000 to 2,000 acres because our animal units require 28 acres for a cow-calf pair. We have 85 percent unemployment in the winter and 75 percent unemployment in the summer. We need value-added agriculture to provide employment for our people and generate economic activity. We must find a brighter future for our young people.

We have a tribal buffalo herd with 2,000 head. And we would like to grow our herd, so we bought a small processing plant in Mobridge, South Dakota, just across the Missouri River from our reservation. And the business is doing great. They are currently trying to get those products, buffalo and beef, back into our local grocery stores, which the Tribe owns.

The 1868 Great Sioux Nation Treaty reserved all western South Dakota from the low water mark on the east bank of the Missouri River to Wyoming as our permanent home. That is about 27 million acres. And we also reserved 44 million acres of unceded Indian territory and hunting lands in North Dakota, Montana, Wyoming, Nebraska, Kansas, and Colorado.

America pledged its honor to keep the peace. But when Custer discovered gold in the Black Hills in 1874, President Grant decided he could no longer defend our Great Sioux Nation. In 1876, Custer attacked us at the Battle of Little Big Horn, and we defended our women and children. Congress passed the 1877 Taking Act to seize our Indian territory, hunting lands, and the Black Hills.

In 1889, just before North and South Dakota reached statehood, Congress took another 9.5 million acres of land in central and western South Dakota from us and divided the Great Sioux Reservation into six smaller reservations including Cheyenne River Reservation. In 1890, the BIA police killed Sitting Bull and the cavalry massacred our people at Wounded Knee.

Right now, we are seeking to recover our sacred site at Wounded Knee under our own Nation title, together with the Oglala Sioux Tribe in restricted fee status. The House recently passed H.R. 3371, The Wounded Knee Memorial and Sacred Site Act, and we appreciate the Committee's support.

The 1868 Treaty and the 1889 so-called Sioux Agreement provided for allotment of tribal lands to individuals. In 1908, Congress opened the Cheyenne River Reservation for non-Indian homesteading. In 1950, Congress took our best 104,000 acres of Missouri River bottom land for the Flood Control Act.

As a result of this history, we do not have enough agricultural land for our Lakota people. We have roughly 900,000 acres of tribal trust lands and 600,000 acres of allotted Indian trust lands and 1.3 million acres of non-Indian fee land on the reservation.

Many of non-Indian neighbors are elderly, and they would like to sell their land to us. Article III of our 1868 Treaty provides for the United States of America to set aside further lands for agriculture for our Lakota people, and we call upon Congress to assist us and continue to buy back fractionated lands and to recover fee lands to provide the basis for jobs and value-added agriculture.

First, with respect, we ask Congress to support the \$30 million BIA request for Fiscal Year 2024 buy-back programs. Second, with respect, we ask Congress to allocate \$400 million for the reservation fee land purchases.

In 1934, Congress authorized \$20 million annually for such purchases, but these were never funded and the work needs to be done now because our Lakota people population has rebounded since the wars of 1800s. We need a solid base for jobs to make our permanent home on our reservations a livable home.

[The prepared statement of Mr. LeBeau follows:]

PREPARED STATEMENT OF CHAIRMAN RYMAN LeBEAU, CHEYENNE RIVER SIOUX TRIBE
OF THE CHEYENNE RIVER RESERVATION

Anpetu waste, Hau Kola. Good Morning Friends. Chair Hageman, and Members of the Committee, Greetings from the Cheyenne River Sioux Tribe. My name is Ryman LeBeau and I serve as Chairman of the Cheyenne River Sioux Tribe.

The Cheyenne River Reservation is composed of 2.8 Million acres of high prairie grassland, interspersed with a few ridges of farmland along the Cheyenne, Moreau and Missouri Rivers. We are the Lakota People of the Three Rivers. Our land is Buffalo Country, and we also raise horses and cattle. Because an animal unit for grazing is 28 acres, we allocated our Range Units in 1,000 or 2,000 acre lease units, with our tribal members receiving allocations for grazing. That provides a living for approximately 600 to 700 families. At Cheyenne River, we also have tribal government and retail jobs, but we have 26,400 people, so our unemployment ranges up to 85% in the winter.

At Cheyenne River, under the Buy Back Program, the BIA spent \$90 Million for almost 35,000 fractionated interests and the equivalent of 300,000 acres. Our Tribal Members received a large part of the payment for the land. So, the program was a strong effort, yet there is much left to be done.

Lakota Belief

In our belief, Tunkasila, Wakan Tanka, Grandfather, the Creator gave the first woman and first man the breath of life at Wind Cave in the Black Hills. Together with life, Tunkasila blessed us with liberty and a sacred duty to care for Unci Maka, Grandmother Earth. Our is the original land of our Lakota Oyate, prior to America.

1868 Great Sioux Nation Treaty

Our 1868 Great Sioux Nation Treaty recognizes 44 million acres of unceded Great Sioux Nation Indian territory and hunting lands in North Dakota, Montana, Wyoming, Nebraska, Kansas and Colorado, and over 27 million acres of Great Sioux Reservation—our “permanent home”—in North Dakota, Nebraska, and South Dakota, with our boundary at the low water mark on the east bank of the Missouri River and including our existing reservations east of the Missouri.

1877 Taking Act: Black Hills

In 1876, President Grant decided to stop defending the Great Sioux Reservation and to force the Great Sioux Nation to cede the Black Hills, our unceded Indian territory and hunting lands. After our defense of our 1876 Lakota-Nakota-Dakota People at the Battle of the Little Big Horn, Congress enacted the 1877 Act taking the Black Hills and our unceded and hunting lands. In 1980, the Supreme Court held that the Act taking the Black Hills and our other lands was unconstitutional because the Act violated the 5th Amendment and violated the 1868 Treaty. *United States v. Sioux Nation*, 448 U.S. 371 (1980).

Act of March 2, 1889: Division of the Great Sioux Reservation

In advance of North Dakota and South Dakota statehood in 1889, Congress divided the Great Sioux Reservation into six separate reservations, including the Cheyenne River Reservation, and further declaring 9.5 million acres of land in central and western South Dakota in between the new reduced reservations.

The 1868 Great Sioux Nation Treaty and the 1889 so-called Sioux Agreement

Our 1868 Great Sioux Nation Treaty and the 1889 Agreement authorized allotment of reservation lands to Lakota tribal members on the Cheyenne River Reservation and the BIA started to allot lands on the reservation.

1908 Surplus Land Act

In *Solem v. Bartlett*, 465 U.S. 463 (1983), the Supreme Court explained America's Allotment Process:

On May 29, 1908, Congress authorized the Secretary of the Interior to open 1.6 million acres of the Cheyenne River Sioux Reservation for homesteading. Act of May 29, 1908, ch. 218, 35 Stat. 460 *et seq.* (Act or Cheyenne River Act) . . . In the latter half of the 19th century, large sections of the Western States and Territories were set aside for Indian reservations. Towards the end of the century, however, Congress increasingly adhered to the view that the Indian tribes should abandon their nomadic lives on the communal reservations and settle into an agrarian economy on privately owned parcels of land. This shift was fueled in part by the belief that individualized farming would speed the Indians' assimilation into American society and in part by the continuing demand for new lands for the waves of homesteaders moving west. As a result of these combined pressures, Congress passed a series of surplus land Acts at the turn of the century to force Indians onto individual allotments carved out of reservations and to open up unallotted lands for non-Indian settlement. Initially, Congress legislated its Indian allotment program on a national scale, but by the time of the Act of May 29, 1908, Congress was dealing with the surplus land question on a reservation-by-reservation basis, with each surplus land Act employing its own statutory language, the product of a unique set of tribal negotiation and legislative compromise . . .

[T]he Act strongly suggest that the unallotted opened lands would, for the immediate future, remain an integral part of the Cheyenne River Reservation. In §1 of the Act, the Secretary was authorized to set aside portions of the opened lands "for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians." . . . Most of the members of the Tribe obtained individual allotments on the lands opened by the Act.

As a result of the Allotment Policy and the Cheyenne River Act, the Cheyenne River Sioux Tribe retains approximately 900,000 acres of Tribal Trust Lands and roughly 600,000 acres of Allotted Indian Trust Lands.

Fractionated Lands and the Land Buy Back Program

The Indian Land Tenure Foundation explains the problem of fractionated lands as follows:

For over a century, Indian families have seen valuable land resources diminish as fractionated ownership increases with each passing generation. As a result of the General Allotment Act of 1887 (also called the Dawes Act), reservation land was divided up and allotted to individual tribal members. When an allottee died, title ownership was divided up among all of the heirs, but the land itself was not physically divided. As such, each Indian heir received an undivided interest in the land. Now, as each generation passes on, the number of owners

grows exponentially, which has resulted in the highly fractionated ownership of much Indian land today.

Parcels with fractionated ownership can have hundreds or even thousands of owners. With so many owners, individual income from the land is minimal—sometimes less than what it costs the federal government to process the payment. In addition, land use is compromised because an undivided interest owner must gain consent from a majority of the parcel's owners to do anything with the land. This makes it nearly impossible for any one of the owners to use the land for agriculture, business development or a home site, all uses that would improve quality of life for Indian people.

On its website, the BIA explains the Land Buy Back Program as follows:

The Land Buy-Back Program for Tribal Nations (Buy-Back Program or the Program) implemented the land consolidation component of the *Cobell v Salazar* Settlement Agreement which provided a \$1.9 billion Trust Land Consolidation Fund (Fund) to purchase fractional interests in trust or restricted land from willing sellers at fair market value. Consolidated interests were immediately restored to Tribal trust ownership for uses benefiting the reservation community and Tribal members.

The Program was established in December 2012 and the 10-year period for its implementation of land consolidation efforts came to an end November 24, 2022.

In 2015, at the outset of the program, Mike Connor, the Deputy Secretary of Interior described the Buy Back Program and our initial Cheyenne River Sioux Tribe Buy Back agreement:

The agreements with the Cheyenne River Sioux Tribe of the Cheyenne River Reservation in South Dakota and the Prairie Band Potawatomi Nation in Kansas detail what each tribal government will do to help implement the Buy-Back Program and provide resources to facilitate outreach and education. The Department has thus far entered into cooperative or other agreements with nearly 20 sovereign tribal nations.

“We continue to be encouraged by the growing momentum and excitement about the Buy-Back Program across Indian Country,” said Deputy Secretary Connor. “As we have made clear, a significant factor in the Program’s success is the ability to work effectively with tribal leadership to best tailor outreach and information to their community. Working closely with the Cheyenne River Sioux Tribe and the Prairie Band Potawatomi Nation, we can maximize our ability to provide landowners with the information they need to make informed decisions about their land through this voluntary program.”

Land fractionation is a serious problem across Indian Country. As lands are passed down through generations, they gain more owners. Many tracts now have hundreds and even thousands of individual owners. Because it is difficult to gain landowner consensus, the lands often lie idle and cannot be used for any beneficial purpose. There are more than 245,000 owners of three million fractionated interests, spanning approximately 150 Indian reservations, who are eligible to participate in the Buy-Back Program.

The Buy-Back Program was created to implement the land consolidation component of the Cobell Settlement, which provided \$1.9 billion to consolidate fractional land interests across Indian Country. It allows interested individual owners to receive payments for voluntarily selling their land. Consolidated interests are immediately transferred to tribal governments and stay in trust for uses benefiting the tribes and their members.

Administration Proposal—AS-IA Bryan Newland May 2023 Appropriation Testimony:

The Biden Administration proposes continuity for the Indian Land Consolidation Program in AS-IA Bryan Newland’s FY 2024 BIA Request:

BIA requests \$30.5 million, a \$22.5 million increase above 2023 enacted, for the Indian Land Consolidation Program (ILCP), which purchases fractional interests from willing individual Indian landowners and conveys those interests to the Tribe with jurisdiction. ILCP funding recognizes the ongoing need to continue to address fractionation on Indian lands while also focusing support on Tribes’ plans for and adaptation to climate change. This program is especially important since the Land Buy-Back Program for Tribal Nations (LBBP), established as part of the Cobell Settlement, ended in November 2022. The ICLP has

incorporated lessons learned from the LBBP and the previous ILCP in BIA to ensure effective program implementation.

Cheyenne River Sioux Tribe Proposed Solutions

The Cheyenne River Sioux Tribe supports the Administration's Request for FY 2024 Funding for \$30.5 million for the Indian Land Consolidation Program (ILCP).

• Additional Funding: \$400 Million for Reservation Fee Land

In the early 1900s, Congress believed that Indian Reservation lands were in excess of the needs of Indian nations. That was not true for the Cheyenne River Sioux Tribe and the Cheyenne River Reservation. Indeed, in the 1950s, America called upon the Cheyenne River Sioux Tribe to once again sacrifice, this time 104,000 acres of our best Missouri River bottom land taken for Flood Control downstream on the Missouri River. In building the dam that created Lake Oahe, significant lands were flooded that stripped the Reservation of our great oak trees, corn production, the best flood plain farming lands and residential lands on the Reservation.

Economic development is a serious challenge for the Cheyenne River Sioux Tribe. Unemployment is 85% in the winter months, with winter temperatures reaching below -20 degrees Fahrenheit, and with wind chill, temperatures feel as low as -50 degrees Fahrenheit. In the summer, unemployment exceeds 75%. The extreme unemployment on the Cheyenne River Reservation leads to a myriad of social economic problems including low educational attainment, drug and alcohol abuse, violent crime, family dislocation and high teenage pregnancy, depression and suicide, among other things.

Ziebach County was the very poorest county in America in the 2010 Census, based on per capita income. Ziebach County is the fourth poorest county in America in the 2020 Census: 47.91% poverty rate, 1,100 people in poverty, and 2,296 population, according to the World Population Review, visited on January 1, 2024. Dewey County is the 18th poorest county in America: 35.59% poverty rate, 1,858 people living in poverty, and 5,221 population. Our tribal records, with 26,400 tribal members, indicate that the Census represents a severe undercount of our tribal population with thousands more of our Lakota People living in poverty.

We need additional lands in order to produce more value added Agriculture. Recently, the Cheyenne River Buffalo Corporation applied for funding for a USDA Grant for Buffalo Processing and Senator Thune wrote a letter to support value added Agriculture:

As a long-time proponent for agriculture as a means to strengthen rural economies, I write . . . As you know, producers have faced significant market disruptions for several years. The largest meatpackers in the country have seen record margins, while local ranchers and farmers have struggled just to make ends meet. While I will continue to pursue legislative and regulatory policies to address issues impacting the livestock industry, I am wholly pleased to advocate on behalf of entities seeking to expand small meat processing capacity.

The CRST Buffalo Authority Corporation is an independent, tribally-owned and chartered organization, whose primary mission is to promote and develop a sustainable buffalo herd for the benefit of the Cheyenne River Sioux Tribe, our state, and the American public. With the largest tribally-owned herd in the nation and through a value-added approach to managing their nearly 2000 head of buffalo, the corporation currently utilizes a small meat processing facility located in Mobridge, South Dakota. Should they receive funding, the CRST Buffalo Authority Corporation plans to construct a new, state-of-the-art buffalo processing facility . . . South Dakota's producers work hard to raise high-quality livestock, and we need to invest in expanded processing capacity to help create more market opportunities and meet consumer demand for their products.

The Cheyenne River Sioux Tribe needs the value added agriculture that Buffalo production and other livestock production represents because we need jobs for our Lakota people to make our Cheyenne River Reservation a livable home.

Through land consolidation purchases, the Cheyenne River Sioux Tribe must recover reservation fee lands for value added agriculture to feed and employ our Lakota people and Congress should help us. In Article III, the 1868 Treaty provides that the Great Sioux Reservation should have additional lands for tribal members:

If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than 160 acres of tillable land for each person

who, at the time, may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity of arable land, adjoining to said reservation, or as near to the same as it can be obtained, as may be required to provide the necessary amount.

As anticipated by Article III of our 1868 Treaty, Indian Land Consolidation requires re-acquisition of large areas of fee land, especially in light of our Native American population growth. In 1980, the Cheyenne River Sioux Tribe's population was 12,500 and today our population is 26,400. Indian Land Consolidation should include \$400 Million for the purchase of Indian Lands on reservations, with large areas of fee lands, including the Cheyenne River Reservation with our 1.3 Million acres of fee lands.

• **Partition Fractionated Indian Trust Lands Upon Request**

Fractionation of Indian lands is especially a problem for economic development. Individual Indians may own a 5% undivided interest in a 160 acre parcel, which would be equivalent to 8 acres were the fractional interest. BIA typically requires all landowners to agree to partition (divide) Indian allotted lands, so the native landowner cannot partition his undivided land interests to use their 8 acres for a home-site without a huge transactional effort. **BIA should amend its rules to allow an Indian trust landowner to partition his undivided interest in allotted Indian trust lands without that transactional effort.**

• **Native Nation Title: Restricted Fee Lands**

America recognized that our Native Sovereign Nations owned our Native lands, and sought title from us for American lands, as we reserved our permanent homelands by treaty, and settlers were forbidden from occupying Native lands while the United States protected our Native lands with Indian "trust title." While Indian trust title, that is the United States of America holding land in trust for Indian tribes, is a useful means to protect Indian lands from alienation, yet without more flexibility, Indian trust title can stifle economic development. The Secretary of the Interior recently re-issued updated Federal Indian trust regulations, 25 CFR Part 151, which provide for the recovery of Native lands in the name of the United States of America for the benefit of Native Sovereign Nations, yet do not allow for the recovery of Native home lands in restricted fee status in the name of our Native Nations.

We are asking Congress to enact legislation to further our nation-to-nation treaties and protect our Native Sovereign Nation homelands through provisions for:

- Issuance of Native Nation Restricted Fee Title to Protect Nation homelands with the status of Indian Country, subject to the restriction that the land may not be alienated without consent of both the Native Nation title holder and the U.S. Congress;
- Affirmation that our Native Nation fee lands are under Native Nation self-government, including civil and criminal jurisdiction, with annexation to Native Nation reservations as the permanent home of our native peoples, and protection by Federal laws and treaties safeguarding Indian lands, including any and all protection for Indian trust lands and at the election of the Native Nation title holder, treatment as a Federal enclave;
- Pre-emption of state and local taxation, and pre-emption of state law or regulations that may interfere with Native Nation self-determination and self-government; and
- Provision for Tribal Government authority concerning value added agriculture, economic development, and governmental services, including housing, health care, education, and other tribal government activities, without secretarial sign-off.

In this way, Native Nation Title and restricted fee land can forward America's long-standing Indian Self-Determination Policy.

Conclusion

Fractionated interests are the result of America's colonial treatment of Indian lands. A more modern approach will move us past the fractionation problem by eliminating BIA's excessive red tape in the management of Indian allotted trust lands.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. RYMAN LEBEAU, CHAIRMAN,
CHEYENNE RIVER SIOUX TRIBE

The Honorable Ryman LeBeau did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. Please expand on your testimony regarding using restricted fee status to encourage land consolidation and reduce fractionation.

1a) What specific legislation should be pursued to make that possible?

Question 2. In your opinion, how can Congress best pursue the idea of allowing and/or encouraging land partition of fractionated parcels? What process will be best for the tribe and the affected landowners?

Question 3. In your opinion, how good of a job did the Land Buy-Back Program do in targeting lands that had a high economic value to consolidate?

Question 4. How has your tribe approached long-term land use planning?

4a) How has fractionation and land consolidation impacted the effectiveness of long-term use planning?

Question 5. The Department created GIS maps and a database for use in the Land Buy-Back Program and has stated that tribes have access to that data to see the lands and help make land planning decisions.

5a) Does the Cheyenne River Sioux Tribe use this data specifically. And if yes, how accessible is this data? And If no, please explain why not.

Question 6. The Land Buy Back Report acknowledges that land fractionation will exceed pre-program levels in 14 years without further action.

6a) Can you further expand from your testimony on any legislative or policy solutions that Congress should consider to help further consolidate fractional interests?

Ms. HAGEMAN. Thank you for your testimony, and I am proud of the fact that the Wounded Knee Memorial bill came out of this Committee, has gone to the House, and I am hoping that we can get that through. And I am excited to come and celebrate with you when we are able to move forward with that project.

The Chair now recognizes the Honorable Victoria Kitcheyan for 5 minutes.

**STATEMENT OF THE HONORABLE VICTORIA KITCHEYAN,
TRIBAL COUNCIL CHAIRWOMAN, WINNEBAGO TRIBE OF
NEBRASKA, WINNEBAGO, NEBRASKA**

Ms. KITCHEYAN. Good morning, Chair Hageman and Ranking Member Leger Fernández, and members of the Committee. My name is Victoria Kitcheyan, and I am the Chairwoman of the Winnebago Tribe of Nebraska. Thank you for the opportunity to provide this testimony.

The Winnebago people make our home along the hills and the banks of the Missouri River in northeastern Nebraska and northwestern Iowa. However, the path that led my people to call this home and our reservation was long and traumatic.

The Winnebago people are originally from Wisconsin. In the 1800s, we were forcibly removed by the United States from Wisconsin to Minnesota, Iowa, South Dakota, and finally, in 1865, to the Winnebago Indian Reservation in Nebraska and Iowa.

Our 1865 Treaty promised that this would be a home for the Winnebago forever. Our ancestors suffered through immeasurable pains to secure a forever home. Through these removals, our culture and way of life was disrupted. Many Winnebago died along the way, and we were separated from the lands to which our culture was closely tied.

Thank you for mentioning Scott Momaday and the work that he did, and he also talked about tribes and Indians being intrinsically tied to the land. And when we are removed from the land, it impacts us throughout everything. Knowing this harsh history strengthens our fight to protect and restore homelands.

By the time the General Allotment Act became law, the Federal Government had been imposing allotment policies on the Winnebago for over 20 years. For example, the Winnebago Removal Act of 1863 allotted Winnebago head of families 80 acres for cultivation and improvement. As a result of those policies, the Tribe just owned one-third of the reservation by 1913.

The Tribe is still feeling the impact of those detrimental allotment policies. Our remaining land was placed in trust to stop the rapid loss of land. Trust land, however, has had terrible long-term consequences for the Tribe. Over the last seven generations, much of our land has become highly fractionated, weakening our ability to exercise our sovereignty, self-determination, and limiting our ability to develop housing, agriculture, and overall economic gain.

The Tribe is very appreciative of the efforts of Elouise Cobell, along with Winnebago tribal leader Louis LaRose and many others that resulted in the Cobell Settlement. A component of the settlement was the trust land consolidation, which was implemented with the Land Buy-Back Program.

In May 2016, the Tribe signed an agreement with the Department of the Interior to implement the program. We participated in two rounds. Through those rounds, approximately \$17 million in offers were accepted for 5,700 equivalent acres.

The Tribe as well as individual tribal members benefited significantly from the program. They used proceeds to pay off debt, create savings and investments for long-term use, helped purchase vehicles, homes, and other necessities for the family. And for the Tribe, the increased control of the land has helped boost the Tribe's economic growth and community development efforts.

In particular, the program has been critical to tribal farming efforts because we have more usable agriculture land. Just this year, Ho-Chunk Farms, a wholly-owned farming company of the Tribe, will farm 7,000 tribal acres while providing jobs, training, and income for the Tribe.

While funding authority for the program has ended, the Tribe is committed to building on successes of the program. We want to work with Congress and the Administration to overcome challenges and create opportunities. Our recommendations are: (1) take down bureaucratic hurdles that often so exist when the Tribe is trying to do something; (2) interpret existing regulations in favor of the Tribe rather than using them as reasons to do nothing; (3) provide oversight to ensure local agencies are carrying out the intent of Congress; (4) continue to implement laws that allow tribes to make

local decisions and set tribal policies that fit the unique need of the Tribe.

For example, under existing agriculture leasing regulations, the Tribe has implemented a lease policy where tribal entities match the highest bidder. This has resulted in higher bidding of this land. It has been very successful for the Tribe and our wholly-owned company.

And (5) additional Federal funding would help sustain the gains that have been made in addressing the fractionation problem.

In conclusion, the Tribe has the capability to use its existing systems of creating tribal entities to achieve certain goals, one of which is land acquisition and consolidation. Using lessons learned and drawing on past successes can help the Tribe be successful in its efforts.

The Tribe looks forward to continuing to work with the Subcommittee and the Department of the Interior in an effort to solve Indian Country's fractionation problem.

Thank you for the opportunity to testify, and I am happy to answer questions.

[The prepared statement of Ms. Kitcheyan follows:]

PREPARED STATEMENT OF VICTORIA KITCHEYAN, CHAIRWOMAN,
WINNEBAGO TRIBE OF NEBRASKA

Good morning, Chair Hageman, Ranking Member Leger Fernández, and Members of the Subcommittee on Indian and Insular Affairs. My name is Victoria Kitcheyan, and I have the honor of serving as the Chairwoman of the Winnebago Tribe of Nebraska ("Tribe" or "Winnebago"). Thank you for the opportunity to provide testimony at today's hearing on "Examining the Opportunities and Challenges of Land Consolidation in Indian Country."

I. WINNEBAGO HOMELANDS

Today, the Winnebago people make our home on a reservation along the hills and banks of the Missouri River in Northeastern Nebraska and Northwestern Iowa. However, the path that led my people to ultimately call this reservation home was a long and traumatic one. My ancestors were pressured to cede their lands and leave what is now the State of Wisconsin. This led to treaties in 1829, 1832, and 1837. Our 1837 treaty resulted in the Winnebago people being removed from Wisconsin to a reservation in Iowa.

The Winnebago people were removed once again in 1846 to two separate locations in Minnesota. Then, after the Dakota War of 1862, the Winnebago, who were not involved in the conflict, were forced to leave our lands in Minnesota and relocate to "an undesirable parcel of land" on the Crow Creek Reservation in South Dakota. The conditions there were so horrendous that many of our people died from "starvation and exposure." Fighting for survival, many Winnebago people fled from South Dakota and sought refuge among the Omaha Tribe in what is now the State of Nebraska.

In 1864, "twelve hundred starving Winnebago" relocated themselves to the bottomland where Blackbird Creek flows into the Missouri River. Subsequently, a Winnebago delegation went to Washington, DC to negotiate the sale of part of the Omaha reservation to the Winnebago Tribe. In 1865, the Winnebago purchased on hundred thousand acres of the north end of the Omaha Tribe's reservation. A treaty was signed in 1865 that exchanged the Winnebago Tribe's land on the Crow Creek Reservation in South Dakota for our new reservation in Nebraska.

The Winnebago Tribe's Treaty of 1865 promised that land would be "set apart for the occupation and future home of the Winnebago Indians, forever . . ." Our ancestors suffered through immeasurable pains to secure a "forever" home for the Winnebago people. Through these removals, our culture and way of life was disrupted, many Winnebago people died along the way, and we were separated from lands to which our culture was closely tied. Knowing this harsh history strengthens us as we fight to protect and restore our homelands.

II. IMPACT OF ALLOTMENT ERA

With the treaty making era coming to an end in 1871, the federal government shifted to an era of allotment and assimilation, which sought to strip us of both our land and culture. The General Allotment Act of 1887, also known as the Dawes Act, sought to break up reservations and tribal lands by granting allotments to individual Indians and encouraging them to take up agriculture.

By the time the Dawes Act was enacted, the federal government had imposed allotment policies on the Winnebago for over 20 years, allotting vast amounts of our lands. A treaty signed on April 15, 1859, declared that each head of family would receive no more than eighty acres, and each single male over eighteen years of age would receive no more than forty acres. Further, the Winnebago Removal Act of 1863 (Act of February 21, 1863) allotted Winnebago heads of families eighty acres of land for cultivation and improvement.

Although our 1865 treaty made no mention of allotments on our new reservation in Nebraska territory, the 1863 Act clearly intended that the Winnebago lands be allotted once the Tribe was settled on the new reservation. Under the provisions of this Act, the Interior Department issued 420 patents to the Winnebago by 1872. These allotment policies were just another way to take our land and were forced upon the Winnebago, resulting in the Tribe owning just one-third of its reservation lands by 1913.

While the federal government's allotment era ended 90 years ago, the Tribe is still feeling the impact of those detrimental policies. Our remaining lands were placed into federal trust status in order to stop the rapid loss of land. Trust land, however, has had terrible long-term economic consequences for the Winnebago people. Over the last seven generations, much of our land has become highly fractionated, weakening our ability to exercise our sovereignty, self-determination, and limiting our ability to use our land for housing, development, agriculture, and overall economic gain.

III. LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS

The Tribe is very appreciative of the efforts of Elouise Cobell, along Winnebago tribal leader Louis LaRose and many others, that led to the Cobell Settlement, which established a \$1.9 billion Trust Land Consolidation Fund ("Consolidation Fund"). Signed into law in December 2010, the Cobell Settlement aimed, in part, to solve the fractionation problem that had been plaguing Indian Country for decades. In 2012, the Secretary of the Interior launched the Land Buy-Back Program for Tribal Nations ("Program") to implement the land consolidation component of the Cobell Settlement.

In May 2016, the Tribe signed an agreement with the Department of the Interior to guide implementation of the Program and outline a coordinated strategy to facilitate education about the Program to landowners. At that time, former Winnebago Tribal Chairwoman Darla LaPointe stated that the Tribe "made a strategic decision to be involved with the Buy-Back Program. This opportunity will provide the tribe with communal use and land development that fits our priorities as a whole. The Tribe will benefit with additional lands, the landowners will benefit monetarily and our local agency's issue with fractionalization will be drastically reduced. We see this decision as mutually beneficial to all parties."

In February 2018, the Department of the Interior provided the Tribe with a *Purchase Summary Report* ("Report") that outlined how the Tribe was benefiting from the Program. Overall, the Program purchased nearly 12,000 fractional interests and more than 4,200 equivalent acres in 327 tracts on the lands of the Winnebago Tribe were consolidated under tribal ownership. Other key findings included:

- Offers were mailed to 3,500 landowners with fractional interests in lands of the Winnebago Tribe;
- Nearly \$11.8 million was paid to landowners who chose to participate in the Program;
- A total of 1,159 landowners (33 percent of those who received offers) sold 11,999 fractional interests;
- The Program purchased \$4,791,782 of Surface resource tracts, \$12,222 of Mineral tracts, and \$6,905,012 of both resource tracts;
- 73 tracts were in 100 percent tribal ownership, 291 tracts in tribal management potential, and 339 tracts with more than 50 percent tribal ownership;
- 643 tracts were still considered fractionated tracts under the terms of the Cobell Settlement containing 48,090 purchasable fractional interests;

- 3,585 individuals own fractional interests at the Winnebago Tribe;
 - Those landowners owned the equivalent of 13,684 purchasable acres: 3,545 Surface acres, 4,780 Mineral acres, and 5,333 Both acres.

In September 2021, the Department of the Interior announced that nearly 3,000 landowners with fractional interests at the Winnebago Reservation had been sent more than \$22 million in purchase offers from the Program. Those landowners accepted \$5.3 million in offers for 1,558 equivalent acres. Through both rounds of offers, approximately \$17 million in offers were accepted for over 5,700 equivalent acres.

The Tribe as well as individual tribal members have benefited significantly from the Program. By accepting Program offers, tribal citizens have used those proceeds for various purposes, including paying off debt, purchasing vehicles to have transportation for employment, and purchasing homes. Others were able to purchase necessities for their families and create savings or investments for long term use. Having a buyer for these fractioned land interests provided individuals with an opportunity to turn an asset with limited practical or economic value with a limited pool of potential buyers into actual capital under tribal members' direct control that could be used to improve their lives.

Benefits to the Tribe include an increase in useable parcels of land that are now under total or majority Tribal ownership and increased agricultural lease income the Tribe. The Winnebago Tribe can now exercise more direct control over who farms the land, what they farm, and how they farm it because the Tribe now has majority control over more land on the reservation. Previously, if the Tribe did not control the land, it had to follow a very regimented federal government mandated leasing and planting schedule. These policies did not allow the Tribe to maximize its benefit because it had five-year leases that did not take into account market fluctuations and forced farmers to plant economically poor crops, such as oats instead or corn or soybeans. The Tribe can now direct which crops can be grown to maximize economic and environmental impact.

The increased control of our land has also helped boost the Tribe's economic growth and community development efforts. For example, the Winnebago Tribe's wholly owned farming company, Ho-Chunk Farms, leases agricultural land from the Tribe for both commercial and organic farming. Ten years ago, Ho-Chunk farms did not exist and did not farm any tribal land. In 2024, Ho-Chunk Farms will farm over 7,000 acres of tribal land, including 1,000 acres of organic crops. Ho-Chunk Farms also provides much needed jobs, training, and income for the Tribe. The Land Buy Program has been critical to the Tribe's farming efforts because it now has more useable agricultural land that can be available for lease by Ho-Chunk Farms. However, it is also critical to note that Ho-Chunk Farms now farms all the Tribe's agricultural land and its ability to grow will be limited to some extent by how much more land the Tribe owns and can consolidate in the future.

IV. NEXT STEPS

Now that the funding authority for the Program has ended, the Winnebago Tribe is committed to finding a way to keep building on the successes of the Program. According to the Department of the Interior's report titled *Ten Years of Restoring Land and Building Trust 2012–2022*, "fractionation is predicted to exceed pre-Program levels in just 15 years without sustained efforts. Further, the Department of the Interior has indicated that it would likely take billions of dollars to resolve the fractionation problem.

The Winnebago Tribe, with limited tribal resources, is continuing to prioritize land acquisition and land consolidation. Additional steps that have been identified include personal finance and estate planning education for tribal members, increased funding and resources for land acquisition, consolidation and management, and development of comprehensive land use plans.

The Program has greatly boosted the Winnebago Tribe's farming operation by allowing the Tribe to have more direct control over the land. The success of Ho-Chunk Farms allows the Winnebago Tribe to move up the economic value chain beyond just leasing the land. The farming profits can be used to acquire even more land—creating a continuing cycle of job creation and economic activity. This provides the Tribe with additional resources to acquire even more fractionated and previously lost land.

Increasing federal funding to help address the fractionation problem would greatly advance the Winnebago Tribe's efforts to continue to consolidate our land base, increase economic self-sufficiency, and strengthen our community.

The Tribe looks forward to continuing to work with the Subcommittee and the Department of the Interior in an effort to solve Indian Country's fractionation problem.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. VICTORIA KITCHEYAN,
CHAIRWOMAN, WINNEBAGO TRIBE

Questions Submitted by Representative Westerman

Question 1. In your opinion, how good of a job did the Land Buy-Back Program do in targeting lands that had a high economic value to consolidate?

Answer. The Winnebago Tribe ("Tribe") participated in two rounds of the Land Buy-Back Program ("Program"). Through both rounds of offers, approximately \$17 million in offers were accepted for over 5,700 equivalent acres. While the Tribe appreciates the benefits it received from this program, more effective communication with the Land Buy-Back Program officials could have led to greater results.

During the first round of the Program, the Tribe was able to review and prioritize highly fractionated lands with the Program officer. It was a hands-on experience where the Tribe had the opportunity to weigh in on key decisions. However, the Tribe's experience during the second round was quite different as most of the decisions came from Program staff without the Tribes input. Further, the Tribe had to constantly reach out to Program staff for updates.

Overall, the Tribe found the Program to be highly effective, but more effective communication with the Program staff could have led to better results.

Question 2. How has your tribe approached long-term land use planning?

Answer. The Tribe prioritizes land acquisition and land consolidation because doing so will strengthen our community and increase economic self-sufficiency. Our long-term land use planning includes personal finance and estate planning education for tribal members, advocating for funding and resources for land acquisition, and developing comprehensive land use plans.

The Tribe is currently working with an external consultant to develop a land use plan for the Winnebago Reservation. The plan will include plans for business, residential, farming, hunting, recreation, and preservation.

2a) How has fractionation and land consolidation impacted the effectiveness of long-term use planning?

Answer. Fractionation has had and continues to have an impact on our long-term planning. Many Winnebago families who hold fractionated lands choose not to sell because of their ties to those lands that were passed on from ancestors. The Tribe certainly understands those strong connections to the lands and is working with families to ensure that the lands will always be within the Tribe and for our people.

Without a consolidated land base, the Tribe has an extremely difficult time developing the community, housing, and expanding infrastructure. The processes and approvals for use of trust land cumbersome and time consuming, especially when parcels are fractionated. This adds costs to development and has the potential to delay a project by months or even years.

Question 3. The Department created GIS maps and a database for use in the Land Buy-Back Program and has stated that tribes have access to that data to see the lands and help make land planning decisions.

3a) Does the Winnebago Tribe use this data specifically. And if yes, how accessible is this data? And If no, please explain why not.

Answer. The Tribe does not have access to the Department's GIS maps and database used in the Land Buy-Back Program.

Question 4. The Land Buy Back Report acknowledges that land fractionation will exceed pre-program levels in 14 years without further action.

4a) Can you further expand from your testimony on any legislative or policy solutions that Congress should consider to help further consolidate fractional interests?

Answer.

1. Programs for tribal member estate planning resources and education to help tribal members make informed decisions.
2. Additional funding for tribal land acquisition so tribes can continue to purchase fractionated interests and other parcels within the reservation.
3. Incentives for land sales to tribes within reservations.

Question 5. Your testimony mentioned the need for personal finance and estate planning education for tribal members. What opportunities has the tribe found to provide this education for tribal members, or what kind of programs would you partner with for this purpose?

Answer. To date, there have been limited resources for this since the BIA stopped providing will drafting services for tribal members with trust lands. Currently, the Nebraska Legal Aid provides will drafting services for elders. We are also aware of organizations such as the Indian Land Tenure Foundation that have programs to help with tribal elder education and will drafting. If grants were available, the Tribe could apply or partner with another organization to provide this service.

Questions Submitted by Representative Grijalva

Question 1. How would you describe the economic impacts that fractionation may have on the Winnebago Tribe?

Answer. Fractionated land makes land use planning extremely difficult, cumbersome, and often impractical. It limits the ability of the Tribe to effectively develop infrastructure, housing, and other projects within the reservation. This has major implications for economic development, entrepreneurship, and growth of the community. Every single project the Tribe is currently working on, such as construction of a new grocery store, emergency services building and childcare center, have had delays and challenges due to not having consolidated and useable parcels of land for development. The delays result in increased construction costs and excessive staff and consultant time spent on analyzing options, often with a result that is less than ideal and often a workaround due to various fractionalized parcels of land scattered throughout the community and reservation.

Question 2. If no action is taken to reduce fractionated interests, how do you expect the situation to look 10 years from now?

Answer. As tribal members pass away without wills, their trust land interests will continue to be divided among all heirs. The more heirs there are on a parcel of land, the more difficult it is for that family to make use of the land. This results in many parcels of land sitting idle or being leased to others for limited economic value to each family member. Idle land adds no value to the Tribe as a whole and hurts the Tribe's ability to effectively develop within the reservation.

Ms. HAGEMAN. Thank you. And, again, I am also proud of the bill that we were able to pass out of this Subcommittee and the Committee addressing the Winnebago lands along the Missouri River. So, we appreciate you coming and testifying on that particular issue as well.

And, finally, the Chair now recognizes Mr. Cris Stainbrook for 5 minutes.

STATEMENT OF CRIS STAINBROOK, PRESIDENT, INDIAN LAND TENURE FOUNDATION, LITTLE CANADA, MINNESOTA

Mr. STAINBROOK. [Speaking Native language.] Good morning. My name is Cris Stainbrook. I am President of the Indian Land Tenure Foundation. I thank the Committee and the Chair for this opportunity to provide some input on what has been a long and arduous

trip for the foundation that we began in 2002, and by 2003 we had been drawn into this issue of fractionated land title and what it could do to Indian Country to help resolve that.

I won't take long today, and I don't have long today. Typically, this is a 1- or 2-hour conversation in most communities to understand where it came from and where we are going if we don't resolve the issues of fractionated land title.

And I will admit I was probably an impetus for getting the mindset that \$2 billion would resolve the issue when I did testimony before the Senate Committee in 2003. That has long since passed, and land has appreciated in value substantially. And I think that is why you see that it may not have met everyone's expectations.

Having said that, I do think it was probably the most efficient program that I have ever seen run by the Federal Government. There are some real upsides to the program, and as has been pointed out, it is a voluntary program, which is, first and foremost, in the foundation's view, a positive. Most of the actions that have been taken to resolve fractionation have not been voluntary. They have been involuntary takings, and probably the best example of that was the Indian Land Consolidation Act and the escheat revisions on the 2 percent interest at the time of probate.

There are efficiencies, everything from the appraisal process to the titling process to mapping of Indian Country. For many tribes, this was the first time they actually had received maps that could tell them where their allotments were and what the amount of fractionation was on each. I think, if nothing else, continuing all of those efficiencies going forward will help not just the future program but all of the other programs of the Bureau of Indian Affairs.

And the other thing it said was the sheer volume could be handled, and that is not insignificant when we are talking about fractionated title.

A few pieces that I would like to say there may have been some drawbacks on. We face the resolution of fractionated title, but people keep saying to us, "Well, we are going to wait for the next Cobell." And that isn't happening, and we have to tell them it isn't happening.

The other drawback is it is expensive. This is a process that essentially buys the land, and that makes it expensive.

The other thing I would say about it is this is really at the end of the pipeline. There are ways to get ahead of it and get on the front end of the fractionation issue, including things that we have been working on for years, which is we provide will-writing and estate planning services for Indian people. Through that we can do consolidation, and we have proven we can do consolidation by stopping it on thousands, literally about 8,000 different titles that are out there.

The other thing, we were the pilot project for the American Indian Probate Reform Act and doing estate planning. About 85 percent of those wills involved consolidation of undivided interests. That is where we have been spending a fair bit of time, and we have been doing that through resources that we can garner from foundations and other sources like OST and also USDA.

I see my time is going away. We also do gift deeds, helping people write gift deeds. The thing that we would really like Congress to consider is making transfer on death deeds available to Indian landowners. It is much more efficient and replaces even that.

We have done an entire package of the programs we offer and tried to work out arrangements with the Department of the Interior for that program, instituting that entire program, and we have provided the Committee with some of the numbers and the savings that are available through a consolidated program, which is substantial.

[The prepared statement of Mr. Stainbrook follows:]

PREPARED STATEMENT OF CRIS STAINBROOK, PRESIDENT OF INDIAN LAND
TENURE FOUNDATION

My thank you to Chair Hagerman and the members of this Subcommittee for the privilege and honor of inviting me to testify today. The topic today has been one of the Indian Land Tenure Foundation's focus for the past twenty-two years.

Introduction

The Indian Land Tenure Foundation (ILTF) was created in 2002 through a community planning process that involved input from more than 1,200 Native people from throughout Indian Country. From the process emerged a consensus on the matters to be addressed that included the recovery to Indian ownership of the 90 million acres of reservation lands lost through the allotment processes, increased management and control of allotted land and the protection of off-reservation cultural and religious sites. At inception, the Foundation adopted the mission/goal statement of, *Land within the original boundaries of every reservation and other areas of high significance where tribes retain aboriginal interest are in Indian ownership and management.*

ILTF has had a number of successes over the 21 years of operation, not the least of which has been assisting the Native Nations in the recovery of approximately 100,000 acres to their ownership. This has been accomplished through a combination of legal assistance, grants and loans from ILTF's subsidiary CDFI, Indian Land Capital Company.

Early in ILTF's work it became apparent that because of the history of federal probate of the estates of individual allotment holders, land was being lost to Indian ownership and millions of acres of the allotments were going underutilized by Indian people. The base cause being that the allotted land remained intact in trust status by the federal government but the title to the beneficial use was divided among the heirs of the decedent in undivided interests as prescribed by probate codes. The one way to avoid this prescribed division was for the interest holder to have a will directing the division of their assets. A quick survey conducted by the Foundation in 2003 showed that less than 7 percent of Indian people had written, valid wills. Therefore, the vast majority of trust allotment estates went through probate intestate and the number of undivided interests in trust allotments was growing exponentially and also included non-Indian interests due to marriage and non-Indian children heirs.

There have been a number of attempts by Congress and the Department of Interior to stem the growth of the number of undivided interests in trust allotments, the first being as far back as the 1934 Indian Reorganization Act that ended the allotment of reservation lands. The next real effort was the 1983 Indian Land Consolidation Act with a center point of escheating the undivided interests of less than 2 percent to the tribe at the time of probate. This provision was found to be an illegal taking and the courts ordered return of taken interest to the heirs. This effort did lead to the establishment of the Land Consolidation Pilot Project aimed at purchasing the interests of 2 percent or less on a limited number of reservations.

It was in this back drop that the ILTF Board concluded that in order for individual undivided interest holders to have control, management and use of their allotments, further title fractionation needed to be slowed and consolidation of interests needed to occur before probate through will writing and other mechanisms. The Foundation committed \$3 million of its own resources in 2003 to provide free estate planning services including the writing of wills to Indian land interest holders to explore whether interest consolidation and/or prevention of new interests could be accomplished.

To be very clear, this work was undertaken to empower Indian people control their land interest assets, particularly as those assets were passed to their next generation.

American Indian Probate Reform Act of 2004 and Estate Planning

In 2003, Senate Bill 550 was introduced to address changes to the federal probate code affecting the Indian held trust land interests. The initial bill contained a number of provisions that, while addressing the needs and issues of DOI, did little to consider the interests and issues of Indian land interest holders and their families. The Senate Committee heard the comments from a number of us who testified at the hearing and asked that we all join a committee to address the concerns and rewrite the bill. The committee consisted of a number of non-profit Indian groups, including ILTF, tribal leaders and BIA field staff. A re-drafted bill was submitted with more provisions addressing the concerns of Indian land interest holders. DOI reinstated a number of provisions and the American Indian Probate Reform Act of 2004 passed as an amendment to the Indian Consolidation Act.

Notable provisions in the Act were that a tribe could submit their own probate code for approval by the Secretary of Interior with a time limit for approval, there would be a pilot project of estate planning, and funding available to work with trust land interest co-owners to develop alternative management structures. The first provision was negated almost immediately by an Undersecretary of Interior sending a memorandum to the tribes saying that the Secretary would not review any tribal probate code until the Department had developed a model probate code. The co-owner alternative management model was not funded until 2015.

The Department of Interior as result initiated the Estate Planning Services Pilot Project with the dual objective of providing community outreach and legal training on the Act and evaluate the need for estate planning services in Indian Country. The Indian Land Tenure Foundation submitted a proposal to Interior to conduct the Pilot Project and was awarded the contract to start in September, 2005.

Two regional organizations—the Northwest Justice Project and the Dakota Plains Legal Services—were selected to provide the direct services to approximately 15 Reservations. The result was impressive given a new service and delivery approach was created with an ever-growing interest from allotment owners. Starting new program services on Indian reservations most often take time to build trust and awareness and the early recipients of those services provided some of the most effective marketing for the program. The final outcome of just under 1,350 wills and 3,500 other estate documents were written in the eight month period. An additional 1,640 requests for services were pending when the contract ended. Eighty-four percent of the wills written resulted in consolidation or avoidance of the creation of new undivided interests. Further, gift deeds were used by many clients to pass their assets to heirs and avoid probate and the extended amount of time needed to get through the process. However, when a continuation of funding was sought, ILTF was informed that the requirements of AIPRA had been fulfilled.

Using numbers from the BIA at the close of the project, project costs of \$486,000 saved approximately \$3.75 million in future DOI administrative costs. More importantly, the project allowed clients to direct the passing of their assets and have a much needed service provided by the trustee.

ILTF has continued to seek funding for estate planning services for Indian land interest holders. Over the past 18 years, ILTF has patched together approximately \$5.5 million for estate planning from sources like the Office of Special Trustee, USDA and private foundations. ILTF is approaching 8,000 wills written and executed as well as nearly 11,000 gift deed transactions. But for the breaks in available funding that causes the loss of momentum with our contracted legal service providers, these numbers would be much higher.

Four years ago, ILTF went to a performance contract model with its legal services providers to test the model on a limited basis. The providers are paid on a scale based on the number and type of documents completed for clients. The model has worked particularly well with private legal firms.

As a final comment regarding estate planning, the DOI should consider using electronic wills and storage of original wills in the Lenexa, Kansas facility. Many of the original wills stored by clients cannot be located at the time of probate and results in the estate being processed as intestate. The process for electronic wills could be the same as that used by the federal court system.

Gift Deeds

Gift deeds are a valuable tool for consolidating interests particularly if the interest holder has multiple interests on multiple reservations and heirs that are also on those reservations. Many, many trust land interest owners fit that description. The gift deed can be used to give land interests to the heirs who would receive

the interests through probate or to any other person or entity, including the tribe. The gift deed process takes considerable time to go through and is currently a permanent transfer of the land interest.

While ILTF's legal services contractors have processed many of these, the number of requests has been increasing dramatically the last four years. The contractors report that clients would be more inclined to make gift deeds if the process were simplified and the gift recipient could be changed if circumstances changed. One significant change that could be made is the requirement for an appraisal on the property being gifted. Getting an appraisal or valuation for Indian land processes can be delayed by many months and even years. As the transaction is a gift without payment, ascertaining its monetary value seems superfluous.

The advantage of gift deeds over wills accrues primarily to the heirs or other gifted party. They will be the owners of the interest upon completion of the deed. Gift deeding all of an interest holders land interests and other trust assets will avoid the lengthy probate process.

Transfer on Death Deeds

Transfer on Death Deeds (TDD) are now allowed and used in 30 states but not allowed on trust assets of Indian people, land interests and Individual Indian Monies Accounts (IIM). TDDs are used to streamline the process of transferring assets to heirs or others without having to go through the probate process. Most states allow the asset holder to identify a beneficiary for one or more of their assets to transfer immediately upon their death. The asset holder may also identify multiple beneficiaries to receive an asset, generally on separate forms. Many Indian people make use of TDDs in passing on their non-trust assets in states where TDDs are allowed.

This is a tool of estate planning that would seem to be a good fit for reducing administrative costs related to the probate process, particularly small IIM accounts and small undivided land interests. In the recent past BIA staff reported that there were approximately 50,000 IIM accounts with less than \$15 in the account and accruing less than \$1 per year. Prior to his retirement, Office of Hearings and Appeals Chief Judge, Earl Waites, estimated that OHA put these small accounts through an expedited probate process requiring approximately \$1,000 of OHA staff time.

While only a modest amount of consolidation may occur due to the use of TDD, the benefits to heirs in terms of timing of receiving the assets would be substantial.

Land Purchase for Consolidation

The most recent example of buying out land interests for the purpose of reducing the number of undivided interests is the Land Buy-Back for Tribal Nations (LBBP). Arising in the settlement of the Cobell lawsuit, in my opinion this program was perhaps the most efficient and effective in reaching its goals of any federal government run program in my lifetime. While there were many outcomes intended and unintended that may prove to be problematic, it fulfilled its goals in consolidating interests from willing Indian land interest owners. Past programs concerning Indian land often involved involuntary participation.

In marked contrast to the processes of Estate Planning, Gift Deeds and Transfers on Death Deeds as outlined above, the outright purchase and transfer of the interest to the tribes ends the possibility of further fractionation of the undivided interest. The upside is, it begins to return the land to the communal ownership much as before the General Allotment Act of 1887. The downside is, those tribes that have not before had leasing or assignment programs for tribal member land usage will be playing catch up. Land management staff will need to expand rapidly.

The processes under the LBBP for appraisal and titling of the transactions set new standards for DOI and BIA. These efficiencies should not be lost. This Program demonstrated that new thinking and technology can be brought to bear within the DOI to more effectively serve their beneficiaries. And, while large volumes of undivided interests were consolidated into tribal interests, the ending of the program will allow fractionation of land titles to resume despite many willing sellers remaining available throughout Indian Country. While the \$30 million proposed in the FY2025 budget may keep the desired processes in place, it will not keep up with the rate of fractionating titles. ILTF's calculations would suggest that an annual allocation of \$60 million to \$100 million is necessary for an extended time to break-even with new interests to be purchased. This does not take into account the accelerating value of land throughout the country.

In short, the Land Purchase program is the most efficient program for reducing fractionated titles, but it is also the most expensive way to reduce fractionation as

the land is being re-purchased. The cost of other approaches is likely that of providing services and administrative processing.

Even with the suggested amounts for a purchase program, it will not solve the fractionated title issue. It is very clear that many Indian people will not sell their land interests for any amount. Whether it is because "It is my Grandma's land and she said never to sell because it is all we have." Or, there is an expectation that minerals may be discovered on the allotment. Or, it is their touch point to their tribe and reservation. That is where the other approaches come into play.

Performance Contract

In 2003 ILTF began trying to address the issue of fractionated title of trust allotments and how the land could work for Indian people rather than be used or leased out to non-Indians at less than market rate. The first foray into estate planning showed that the legal expenses would soon outstrip available resources and at the same time there would be administrative savings at several levels for DOI. We approached DOI in 2004 with a proposal to do a performance contract based on the number of fractional interests consolidated or avoided and the savings in administrative costs to DOI. ILTF was told it shouldn't be a performance contract but rather a grant project but funds weren't available. ILTF took the proposal back again in 2005 and again in 2018. The latter model was based on a Social Bond model of initial injection of private capital through bonds. ILTF was told it should be presented as a performance contract not a Social Impact Bond by the very same person we met with in 2004 who said it shouldn't performance contract!

ILTF has modelled the program for legal services to help Indian people with Estate Planning, Gift Deeds, Transfer on Death Deeds, and purchase of interests. The attachment is the summary of costs for the first 10 years of program services (\$696,781,426) and the savings of DOI administrative costs (in a range of \$7.5 billion to \$15.2 billion) over 40 years. The costs include an annual allocation of approximately \$60 million in purchases of undivided interests.

As you will note, the return on the cost of the purchase of land interest component is the lowest. As noted above, that is due to the actual purchase of land interests. The Transfer on Death Deeds is the highest return on dollars expended largely due to the absence of probate costs.

The provision of legal services covering any of the above possibilities and informing clients of their options at one time increases the efficiency of the service. It also allows for the client to decide which approach best fits their personal situation.

Conclusion

ILTF would recommend that Congress and DOI consider approaching the issue from multiple approaches to have any hope of correcting what your predecessors created more than 100 years ago. Now would be the time to take action and benefit from the reduction of undivided interest from the Land Buy-Back Program as it will only grow from here. The Foundation will continue to work on this issue as well but as would be expected, the ILTF focus will be on serving the interests of the Native Nations and individual Indian land interest owners.

If ILTF can provide any further information or input, please don't hesitate to contact me.

Thank you for the opportunity to provide these comments to the Subcommittee.

ATTACHMENT

PERFORMANCE CONTRACT FOR INDIAN LAND TITLE CONSOLIDATION
SUMMARY

	Total Program Costs (10 years)		Total DOI Savings	Net DOI Savings (40 yrs)	Net savings /Prog Cost
Estate Planning/Will Writing	\$10,309,323	low	\$469,463,093	\$459,153,770	44.5
		high	\$1,408,389,280	\$1,398,079,957	135.6
Gift Deeds	\$12,324,788	low	\$1,421,103,486	\$1,408,778,697	114.3
		high	\$2,811,369,696	\$2,799,044,908	227.1
Land Interest Purchases	\$652,397,688	low	\$2,926,983,474	\$2,274,585,785	3.5
		high	\$4,953,054,450	\$4,300,656,762	6.6
Transfer on Death Deeds	\$21,749,626	low	\$3,423,909,615	\$3,402,159,988	156.4
		high	\$6,765,603,239	\$6,743,853,613	310.1
Combined Program	\$696,781,426	low	\$8,241,459,667	\$7,544,678,241	10.8
		high	\$15,938,416,665	\$15,241,635,239	21.9

low= 3 heirs per interest holder

high= 6 heirs per interest holder

QUESTIONS SUBMITTED FOR THE RECORD TO MR. CRIS STAINBROOK, PRESIDENT,
INDIAN LAND TENURE FOUNDATION

Questions Submitted by Representative Westerman

Question 1. In your testimony, you mentioned the Indian Land Tenure Foundation's successes in implementing estate planning services for tribal members over the past 22 years.

1a) Can you further elaborate on why in 2003 less than 7 percent of tribal members had written valid wills?

Answer. While there has been little specific research on why, the most common assumptions center on the lack of a cultural history of estate planning and will writing. Prior to the passage of the General Allotment Act (GAA) in 1887, assets of an Indian person largely passed to the heirs in accordance with the specific tribal custom. Specific land areas in individual ownership was extremely rare and were more often assignments by the tribes for use by family groups. The need for passing land assets and other assets did not arise legally until the allotments were issued through the GAA. Under the GAA, the federal government declared Indian land-owners as incompetent to handle their land affairs. Having a will was a completely unknown to Indian people and, as an "incompetent," any will they may have had would have been deemed unlawful.

The early probates of Indian assets, including land allotments, were subject to the state codes where the land was located. Few Indian people understood the codes or had legal assistance to develop a will. In reaction to the Howard-Wheeler Act of 1934, the federal government developed a probate code for the division of land interests among heirs followed by the Bureau of Indian Affairs (BIA) writing wills for Indian trust assets, including land interest holders. The vast majority of BIA wills were written by non-legally trained individuals and simply followed the distribution structure in Department of Interior regulations. There was little reason to have a will unless the Indian person had some very large estate and could afford independent legal advice.

The passage of the Indian Land Consolidation Act (ILCA) of 1983 was the first significant effort to begin trying to stem the amount of fractionation of land title in the allotments. Several provisions in the ILCA drew the attention of Indian land interest holders for their negative effects, including the administrative taking of small interests. This resulted in the first real uptick of Indian wills being created by those who could afford legal assistance. Amendments to ILCA in 2000, led to another bump but also led to many allotments being taken out of trust status rather than passing through the federal probate code.

1b) Which of these reasons still hold true today that Congress should take into consideration when legislating in this area?

Answer. Few of the issues discussed above are current impediments to estate planning for allotment interest holders. The largest one that still exists, particularly for the elderly, is the financial cost of legal services. In 2004, the BIA discontinued writing and storing wills for trust assets. The Indian trust land interest holders are therefore required to find legal services elsewhere. Complicating this further is the low number of attorneys trained in the will preparation under the American Indian Probate Reform Act (AIPRA) provisions.

Question 2. Your testimony also mentioned the increase of interest from allotment owners and writing of wills after the American Indian Probate Reform Act was passed.

2a) Has interest continued to increase among allotment owners?

Answer. Yes, the interest has continued because AIPRA contains provisions that are seen as onerous to many land interest owners. The only way for the land interest owners to avoid having the provisions, including forced sale at probate, implemented is to have a will designating heirs and the distribution of assets. Indian people know and understand the issues of further fractionation of land title. They are willing to have wills that stop, or at least reduce, the creation of new undivided interests. They also are willing to consider gift deeds (Transfer on Death Deeds if made available) to further prevent more fractionation.

The bottom line is, Indian people want to control their land assets and the outcome when they pass on.

2b) Are there other considerations or factors that the Foundation has found that work to engage tribal members and Indian landowners in the estate planning process?

Answer. Sadly, yes. The request for legal services jumped dramatically during the COVID crisis. The legal service providers attempted to meet the demand through different means, including providing online services, and at one site providing a drive-through service with staff in full protective gear. Unfortunately, several clients were unable to execute their wills before contracting the virus and passing on.

Educating people on their options and what will occur if they choose the No Action option generally is sufficient to move people. However, it is a continual process. What might not be on their mind 1 day, will become urgent for them on a different day.

Word of mouth and continuity of services are also very important. After ILTF's providers serve a few initial clients in a community, word spreads but the providers need to be there regularly.

Question 3. Please expand on the difficulties that the Indian Land Tenure Foundation faced while working with the Department to put in place a program that would address estate planning for individual Indians.

3a) How can this be avoided in the future?

Answer. It seems the DOI and BIA keep looking for the silver bullet that will fix the issue of increasing fractionation of land title. The ILCA in 1983 included the escheat provision—small interests less than two percent and earning minimal revenue would be taken at probate by DOI and given over to the tribe. These were found to be unconstitutional takings.

The next attempt was the Land Buy-Back Pilot Project of the 1990s. It had some promise but also major flaws. It focused on purchasing very small (less than two percent) interests and returning the interest to the tribes, but it also put a lien on each purchase and needed to account for revenues against each small interest purchased. This did not reduce the BIA management costs significantly. Also, by not purchasing the larger interests from elderly willing sellers, the BIA missed the opportunity to do one transaction as opposed to many multiple transactions once an estate went through probate. The administration costs were prohibitive.

Next was AIPRA. This was a legislative attempt to change the probate outcomes for intestate estates and reduce fractionation by limitations on who could inherit interests. This was done with the "single heir rule" but also included provisions for "forced sale" at probate. These provisions are modestly successful, but will likely take 30 to 40 years to come close to ending fractionation, and will be effective only if Indian land interest holders do not write wills.

AIPRA also contained provisions for an estate planning/will writing pilot project. The Foundation was selected to do the pilot project. While it was successful serving

clients and reducing fractionation in line with clients' wishes, we were told further program funding would not be available as, "The Department has fulfilled its responsibilities under the AIPRA legislation."

The most recent attempt came out of the Cobell Settlement, the Land Buy-Back Program (LBBP) for Native Nations. To their credit, DOI took lessons from the prior land buy-back pilot project, added much needed technology applications, and applied the program across a wide geography of Indian Country at a scale sufficient to have an impact. This was clearly their best effort to date. However, not every Indian land interest holder was willing to sell their interests. Whether it was their tie to their reservation, or it was Grandma's land, or it is their only source of regular income, some percentage of Indian people have no intention of selling at any price.

Our difficulty in working with DOI and BIA seemed to be that we were proposing a multi-pronged approach using all the tools in the toolbox to stem the tide of creating more undivided interests. The Foundation also came at the issue initially from the perspective of doing something to help Indian people control their assets, not to save the federal government administrative costs. Admittedly, we were naive in thinking the trustee would have the beneficiaries' interest as a priority.

3b) Do you think the administrative costs that could be saved have increased or decreased since the Foundation suggested their program?

Answer. Clearly, it has increased from our first attempt in 2003 to undertake the project. At that time, the administrative cost of managing one undivided interest in Indian land was an average of \$125 per year. This number was included by the Secretary's Office in testimony to the Senate Committee on Indian Affairs. In our most recent modeling (2017), the calculation of \$168 per undivided interest per year was provided by the Secretary's Office. While we have not run the numbers since the Land Buy-Back Program was completed in November, 2023, it is likely that the total administrative costs are approximately the same but began rising literally the day the Buy-Back Program ended.

Ms. HAGEMAN. Again, I want to thank all of you for your testimony, your insight, and the expertise that you bring to this discussion.

I am now going to recognize the Members for 5 minutes of questioning, and I am going to start with myself, and there are just a couple of comments that I would like to make.

In listening to you, one of the things that I really appreciate that you have brought today is you have brought solutions. We don't always see that. We don't always see where our witnesses come in and have a list of things that they think need to be done to address the issue that is creating the problem at hand. So, I appreciate that.

Congress sometimes doesn't always act as quickly as you would think or that you would want, but at the same time, bringing this list to us allows us to better focus on what is actually going to be a solution, because a lot of times I think government is always trying to fix its last solution, and that becomes very inefficient and very wasteful of our resources.

I especially appreciate the comment that we need to be interpreting regulations and statutes in favor of the tribes and in favor of resolving the issue rather than creating more barriers. That is another thing is, as an attorney who has dealt with regulations and administrative agencies for decades, I feel that so much of the work that our agencies do is to create barriers rather than to create roadmaps.

And I appreciate the idea of coming up with more ideas or coming up with more solutions as to how these things can be interpreted to actually address and solve the problem rather than creating more problems or more barriers.

I also want to note that the Land Buy-Back Program spent \$1.69 billion to reduce land fractionation on reservation lands, but the fractionization has still not on a consistent basis been on a downward trajectory. So, we need to consider the fact of whether just throwing more money or providing more money for this is the solution or whether there are other ways that we can address this.

Again, with your expertise, your knowledge of the on-the-ground situation, I think that you are absolutely in the best position to educate us on those other opportunities.

I am going to start with you, Mr. Weatherwax. In your testimony, you note that the Blackfeet Nation has utilized innovative technology when it comes to land management. Could you elaborate just a bit further on that and also if it would be useful to have regional organizations collaborate on land management. If you could just tell us a bit about some of the innovative things that you have done for land management.

Mr. WEATHERWAX. For land management, we have used the GPS system, historic maps and photos, to try to give the Tribe the most accurate picture of landownership and jurisdictional issues. We are tracking land with our own software because we do not have access to TAAMS. We have had to reinvent the wheel because we don't have access to the concise Federal database.

Ms. HAGEMAN. Well, then maybe that is one of the areas that we could address. And I appreciate Mr. Stainbrook's comments about the fact that sometimes with this mapping program it was the first time that our tribes even had a map of their lands, which is rather stunning to me as I sit here in 2024 to learn that. So, I appreciate that information because I think mapping and understanding what is there is absolutely critically important in terms of knowing where we go from here.

Mr. LeBeau, I am going to go to you next. I just have a quick comment. You indicated that your allotments for your ranchers or for your cattle producers is about 1,000 acres per, and it takes 28 acres per cow-calf pair, which means that each 1,000 acres would sustain about 35 head of cattle, which coming from a ranch, that doesn't seem like a lot. That seems to me a very restrictive way to raise livestock.

Have you found that there are ways that we can increase that to increase the economic development and opportunity for our tribal members? And he just interrupted me, but that is OK because we like Dusty. That we can increase that allotment or increase those numbers, so that we can have additional economic development for our tribal members in terms of cattle production.

Mr. LEBEAU. Yes. That would be great, if we could increase the production. One way is to study the land. Perhaps the grass can support more animals, more calf-cow pairs, than originally thought. And the other way would be to do the land buy-back thoroughly through the reservations once again.

This program has helped our tribal members a lot, and we have benefited from it, whether it was through farming or through ranching. We come from a reservation where the vast majority of our lands are used for ranching. So, it makes sense for this program to continue once again.

Ms. HAGEMAN. I appreciate that. I am out of time. I wish I had more of an opportunity to visit with you, but we will have other opportunities.

And, Representative Johnson, thank you for joining us today.

With that, I am going to call on the Ranking Member for her 5 minutes of questioning.

Ms. LEGER FERNÁNDEZ. Thank you, Madam Chair. And I will say one of the things we often don't hear in this Committee is that a Federal program is working and working well. I think that is the most efficient program you have seen, and I think that that is a testimony to the fact of how bad things were and how important it was to finally address it. And thank heaven for Cobell and the courageous leadership that her and their attorneys took in taking on the United States about its failures of trust responsibility.

We have heard that maybe money is not important and that we don't need to throw more money at this issue. But let me ask each of the witnesses, is it necessary for the Federal Government to actually allocate more money to assist with the Land Buy-Back Program? Is that an essential element?

And I will just maybe go from left to right. Honorable Councilmember Weatherwax, do we need more Federal money to assist with the Land Buy-Back Program?

Mr. WEATHERWAX. Yes, ma'am. The funding is pivotal. The fractionation just spirals unless you can stop it.

Ms. LEGER FERNÁNDEZ. And because there isn't enough tribal money to actually buy back the land, it was the Federal Government who did that. Chairman LeBeau?

Mr. LEBEAU. Yes. This program has definitely been a win for our Tribe, and I think for Congress. I think it worked out great. And the Tribe doesn't have the funds to fund programs like this. We often do land purchases with our own funds, but that is on a limited basis.

We currently have tribal members that come in very often to sell their land, and like I said, we are not always able to do that with the funds available. So, we think this program worked great on our reservation, and we would like it to continue. Thank you.

Ms. LEGER FERNÁNDEZ. Thank you. Chairwoman Kitcheyan?

Ms. KITCHYAN. Yes. More funding is needed, and I would say we need to expand the scope of how we reacquire the land. In Winnebago, like many other reservations, there were many ways that we lost the land. So, now we have these farm families that are retiring, and the children or the grandchildren no longer want to farm. That is our situation. So, there is this massive acreage that the Tribe can't afford to buy, but are also once-in-a-lifetime opportunities.

So, beyond just the fractionization and all of the things we have covered today, there are many other ways that this land came out of the Tribe's hand. We just saw this movie "Killers of the Flower Moon". We are peeling back the layers of what happened to the tribes, and how we reacquire the land is going to take an awareness and acknowledgement of those things, and also expanding the scope on other lands that are largely held by non-Natives within the reservation boundaries.

Ms. LEGER FERNÁNDEZ. Right. And I think that is another big issue of, how do we get other lands that were taken in fact? As we know, listening to the need for Black Hills to be restored is something that we all should constantly remember on this Committee.

Mr. Stainbrook, the one who is willing to compliment the BIA.

Mr. STAINBROOK. Well, the reality of it is this situation is going to get much worse unless actions are taken and taken over a period of time. And I think what the program ended up demonstrating is that, yes, you can do large-scale purchases back to the tribes, but the tribes aren't even in the ballpark when it comes to being able to do that at the scale it needs to be done. Only the Federal Government is at that place.

We have examples. The Rosebud Sioux Tribe, for instance, has been buying undivided interests under the Tribal Land Enterprise since the 1940s, have spent probably at least tens of millions, if not almost \$100 million, on purchases. And they are still a long ways from being done, maybe half of the way there.

I think if you don't get on the front end of this deal, and stop fractionation at the source, it will cost anywhere from—in fact, in the proposal we made to the Department, it was \$60 million a year for 10 years for the buy-back program, and about \$6 million to \$7 million a year for providing legal services to help people reduce the fractionation through estate planning and other means. So, there is a cost efficiency that needs to happen.

Ms. LEGER FERNÁNDEZ. Thank you, Mr. Stainbrook.

My time has expired, but I do appreciate the chart that you provided us which shows both the savings, the upfront savings that we can do, because it is not just money, it is also legal, and \$15 billion is a significant amount of money to be saved by your proposals. Thank you very much.

Ms. HAGEMAN. The Chair now recognizes Representative LaMalfa for 5 minutes of questioning.

Mr. LAMALFA. Thank you, Madam Chair.

So, help me understand this a little bit, a private party, a tribal member, has land that they wish to sell, they want to move on, they want to go somewhere else, whatever it might be. Not unlike in the agricultural world where maybe the family wishes to sell, move on, or not make any money farming, and the kids/grandkids don't want to do it anymore. So, this is kind of what we are looking at.

So, we want in this program to not lose that land as tribe or tribal member ownership. That is the bottom line, right? Anybody on the panel?

Ms. KITCHEYAN. Yes, sir. And these are large corporations that are coming in and buying this land on the reservation.

Mr. LAMALFA. The same thing in agriculture we face all the time as farmers.

Ms. KITCHEYAN. Or these auctions that we are learning about and how we participate in these auctions. And just taking control of how we buy back our reservation is not only an effort we are successfully doing through the Land Buy-Back Program, but we are like pulling all our pennies together and we are trying to leverage our resources as to how can we get this done?

Mr. LAMALFA. Sure. I get it. Let me reclaim my time here. I am just looking at it from a very broad context here, and I sympathize. I sympathize with how land and treaties and how much has been broken by the Federal Government, outsiders, against tribes over the decades, the many decades and such.

But I guess at what point do we say we don't have to do this anymore? At what point does a Federal taxpayer not have to come in behind because individuals are making individual decisions on their land and saying we need to subsidize tribes to buy this land to keep it in tribes?

Are there provisions in here that would cause that a tribe would permanently own the land, that they cannot sell it, or should we even have such a provision that says if the Federal Government helps purchase this land from the private tribal member and convey it to the tribe, is the tribe allowed never to sell it then?

Councilman Weatherwax, would you wish to touch on that, please?

Mr. WEATHERWAX. Yes, thank you. I believe the misconception that we are not taxpayers kind of stuck out there to me. I am sorry.

Mr. LAMALFA. I didn't mean it that way, sir. We are talking billions of dollars of programs that 50 states and everybody is going to pay on. I am sympathetic to what you are talking about, but I am just saying what is this going to look like long term? When is there an expiration date, like, yay, we have gotten there, we have done it right?

Mr. WEATHERWAX. I don't believe there is an expiration date on this. I believe when—

Mr. LAMALFA. So, there needs to be a permanent program that every time an individual tribal member wishes to sell the land that the Federal Government should purchase it and give it to the tribe as a whole?

Mr. WEATHERWAX. I think providing tribal land buy-back money directly would help us, and it would allow us direct, quick, local decision-making, and that would help.

Mr. LAMALFA. Yes. Sir, don't let me be misunderstood on this. I am very sympathetic to a lot of this, but these will be questions I get asked at home, like, when do these programs finally culminate here?

Because I am very frustrated about the tribal process to purchase land, say surplus lands that the Federal Government has, and we are working on that with some of our locals at home and such, and/or to build housing and they have to go through all these, it requires legislation in Washington, DC.

I am happy to do my job and help do that. We have done that. But it shouldn't require you having to come hat in hand to this place and ask a Congress Member to run a bill so you can purchase a piece of land that might be surplus already to the government. There is a lot of frustration with all of this, across the board.

But one of my questions was, should there be a revolving fund that Indian Country can then consolidate their needs over a longer term without having to worry about the whims of Congress here in the Capitol? Would a revolving fund be helpful in that?

Mr. WEATHERWAX. Yes, sir. I think we need to work together to try to solve this. I mean, this is a bigger problem.

Mr. LAMALFA. Yes. Absolutely. Is there something that you can look at long term and that this is going to finally work out well, because I think many folks would look at the program and say, "All right. We are willing to help for a time period here."

But if there keeps constantly being this changing of hands of land, and then the Federal Government has to come in and somehow try to fix that, it is a lot like agricultural land. Ag land ends up being put into land trusts where it can be tied up forever or for certain payment, and all that, which I have a little mixed feeling on that, too, about someone saying you have to tie up your land forever as well, too, if something changes on your farming operation.

So, these are just kind of the bigger, broader questions I want us to think about a little bit. My time is way over, and I better yield back. Thank you all for being here.

Ms. HAGEMAN. Thank you, Mr. LaMalfa. And I understand that some of the frustration is the Land Buy-Back Program did not have a mechanism to provide revolving funds, which could have worked to sustain land consolidation funding. And I think that is something that we do need to look at.

I think that could be something that could be helpful at funding future land purchases, so you don't have to come back to this body to be able to move more quickly and address a specific parcel. It could more readily deal with the concerns that you have.

I want to, again, thank all of you for your testimony today, for traveling here, addressing this issue, because I do think that this is an incredibly important issue.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Friday, February 2, 2024, and the hearing record will be open for 10 business days for these responses.

If there is no further business, and without objection, the Committee stands adjourned. Thank you.

[Whereupon, at 11:07 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Statement for the Record**Darryl LaCounte****Director, Bureau of Indian Affairs
United States Department of the Interior**

Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Darryl LaCounte, and I am the Director of the Bureau of Indian Affairs (BIA) at the U.S. Department of the Interior (Department). Thank you for the opportunity to discuss opportunities and challenges of land consolidation in Indian Country.

Background

Although the federal policy of allotment ended in 1934, the impacts of that policy continue to reverberate across Indian Country. Approximately 90 million acres of Tribal lands—an area larger than the state of New Mexico—were taken through the allotment process, with most of that land sold to non-Indians in forced sales. In addition, some allotments designated for individuals were held in trust or restricted status. These trust and restricted allotments are often inherited by the children, spouses, and other relatives of the original and successive landowners, creating undivided common ownership interests in the land. As a result, fractionation of those original trust and restricted allotments has grown exponentially over generations.

The fractioned ownership interests affect nearly 5.6 million acres of allotted land throughout Indian Country, locking up a significant area and creating an overly complicated land tenure status where single tracts of land could have more than 1,200 individual landowners. When tracts have multiple co-owners, it is difficult to obtain the required approvals for leases or other uses of such lands. As a result, many tracts are unavailable for any purpose. During FY 2022, approximately 64 percent of the 100,978 fractionated tracts did not generate any income for the individual Indian landowners.

In addition, as a result of fractionated ownership of allotted lands and the checkerboard nature of landownership patterns on many reservations, Tribes are experiencing major challenges that impact Tribal sovereignty and self-determination. For example, fractionated ownership may make it difficult to protect or obtain access to sacred or cultural sites, and the checkerboard ownership pattern creates jurisdictional challenges and ties up land within the reservation boundaries, making it difficult to pursue economic development and address unique climate-related challenges.

Land Buy-Back Program for Tribal Nations

In the 1996 class action lawsuit *Cobell v. Salazar*, five litigants sued the United States for the alleged mismanagement of trust funds belonging to approximately 300,000 American Indians. The *Cobell* plaintiffs made numerous allegations including that the government did not fulfill its trust responsibility through a failure to account for the trust funds of the individuals generated by mining, oil and gas extraction, timber operating, grazing, or similar activities.

The *Cobell* case settled in 2009 for \$3.4 billion (*Cobell* Settlement). As part of the *Cobell* settlement, \$1.9 billion was allocated to establish the Trust Land Consolidation Fund (Consolidation Fund). The *Cobell* Settlement and the creation of the Consolidation Fund resulted in the development of the Land Buy-Back Program for Tribal Nations (LBBP).

The LBBP was established in 2012 by the Secretary of the Interior to implement the land consolidation aspects of the *Cobell* Settlement, which required that the \$1.9 billion Consolidation Fund be expended within a 10-year period that ended in November 2022. The principal goal of the LBBP was to consolidate the maximum number of fractional trust or restricted fee land interests through voluntary sales with individual landowners. All interests that were purchased were put into trust for the Tribe with jurisdiction over the interest. Consolidating the fractionated interest into Tribal ownership creates opportunities for economic development, conservation, cultural stewardship, or other uses deemed beneficial by Tribes. As summarized in the December 2023 LBBP report, the Tribes are using the newly-restored lands for vital matters, such as to make infrastructure improvements, deliver water for agricultural operations, secure utility corridors, protect oyster beds, and expand school facilities and recreation areas. See U.S. Department of the

Interior, “*Ten Years of Restoring Land and Building Trust 2012–2022, Land Buy-Back Program for Tribal Nations*,” pgs. 30–31 (December 2023).

During its first year, the LBBP largely focused on planning, consultations, research, analysis, reviewing the lessons of the previous BIA Indian Land Consolidation Program (ILCP), and active engagement with Tribal leaders and individual landowners. The LBBP began making land consolidation purchases in December 2013 and by its conclusion had made \$4.3 billion in offers to 163,763 individuals for fractionated interests at 53 locations.

Throughout the 10-year duration of the LBBP, \$1.69 billion was paid to landowners. Tribal ownership was created, or increased, in more than 51,000 tracts of allotted land with 1,916 of those tracts achieving 100 percent Tribal ownership. These efforts resulted in more than one million interests being consolidated, thus restoring approximately three million equivalent acres of land to Tribal ownership. On average, the cost of these acquisitions was approximately \$570 per equivalent acre.

The LBBP intentionally sought to maximize the funding available to purchase as many fractionated interests as possible through limiting the program’s implementation costs. Accordingly, implementation costs were kept to less than 8 percent—considerably below the 15 percent of what was permitted pursuant to the *Cobell* Settlement—which allowed the LBBP to transfer \$135.2 million from the implementation portion of the Consolidation Fund to the land purchase portion. Although the LBBP significantly reduced and helped slow the growth of fractionation, without continued sustained efforts going forward, fractionation is predicted to exceed pre-LBBP levels in approximately 14 years. See Chart A.

Future Work to Address Fractionation

In a December 2009 Senate Hearing, former Deputy Secretary David J. Hayes testified that while the \$1.9 billion established for land consolidation as a result of the *Cobell* Settlement would make a significant impact in addressing fractionation, resolution of the problem would likely require \$6–8 billion. In the 2016 Status Report on the LBBP, former Secretary of the Interior Sally Jewell reiterated concerns that the Consolidation Fund would not be sufficient to purchase all fractional interests, and that the value of remaining fractionated land would probably be several billion dollars at the LBBP’s conclusion in 2022.

The LBBP demonstrated that with adequate resources, establishment of efficient processes, and working in close coordination with Tribes, continued land consolidation through voluntary sales is, and will remain, an effective approach for addressing fractionation. Moreover, these efforts continue to receive broad support in Indian Country. To build on the achievements of the LBBP and maintain the already existing infrastructure, the Department continues a sustained effort to reduce fractionation through ILCP as described in the FY 2024 budget request. The current ILCP has incorporated lessons learned from the LBBP and the previous BIA ILCP to ensure effective program implementation.

To keep pace with the predicted growth in fractional interests and maintain the existing infrastructure, the Administration’s FY 2023 budget request included \$80 million for voluntary land acquisitions. This funding was critical to take full advantage of consolidation opportunities where land appraisals were complete, such as for the Pine Ridge Reservation where \$78 million in offers were ready to be extended, subject to availability of funds. Ultimately, \$8 million was appropriated to BIA in the FY 2023 budget for land consolidation efforts. For FY 2024, the President’s budget request for the ILCP is \$30.5 million.

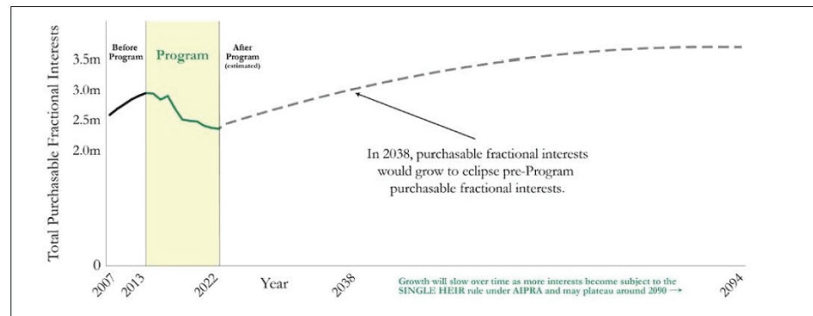
In addition to land consolidation through voluntary sales, other ideas for addressing reduction of fractionation and its impact should continue to be discussed going forward. Several ideas were brought to the Department’s attention in the last few years. Among them are facilitating co-owner purchases and expanding land consolidation opportunities beyond the original 53 locations involved in the LBBP. The Department will continue to engage individual Indians, Tribes, and organizations in conversations and consultations that may lead to possible proposals and eventual solutions for fractionation.

Conclusion

Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. By continuing to address the lingering effects of previous allotment policies, including the resulting land loss, landlessness, and ongoing fractionation, the Department will support the cornerstone principles of protecting Tribal homelands. A comprehensive approach to addressing fractionation is appropriate given the breadth and complexity of the ongoing impact. The Department is committed

to working with the Subcommittee to develop meaningful strategies and tools to address fractionation while continuing to seek appropriate resources.

Chart A



U.S. Department of the Interior, “Ten Years of Restoring Land and Building Trust 2012–2022, Land Buy-Back Program for Tribal Nations,” pg. 1 (December 2023)

QUESTIONS SUBMITTED FOR THE RECORD TO DARRYL LACOUNTE, DIRECTOR, BUREAU OF INDIAN AFFAIRS

Mr. LaCounte did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. Despite spending \$1.69 billion dollars to reduce land fractionation on reservation lands, the Land Buy Back Program’s own report showed that further actions would be needed to keep the downward trajectory, and without further action in 14 years the rate of fractionation will surpass pre-program numbers. How can the Department continue to advocate for increased funds for land consolidation when it seems clear from DOI’s own report that more is needed than just additional funds being allocated for voluntary buyback purchases?

Question 2. Under the Indian Land Consolidation Act, when a fractionated tract was sold to Interior, the Department would transfer the land title into trust and place a lien on the tract. The lien would be paid off with any revenues gained through development of the land—creating a revolving fund for additional purchases.

2a) Would the Department consider a similar sustainability mechanism in any future land consolidation efforts?

2b) What further policy changes would the Department suggest to make funding sustainable without requiring congressional appropriations every year?

Question 3. It is the Committee’s understanding that the GIS maps created through the Land Buy Back Program can continue to assist the Department and tribes in land consolidation efforts.

3a) How accessible are the GIS maps created through the Land Buy Back Program for tribes looking to consolidate land on their own? Is there any data about the parcels that tribes cannot access?

3b) What, if any, legislative changes are needed to ensure full access for tribes and continued use by the Bureau of Indian Affairs in all agencies to the GIS maps and any other supportive technologies and databases created for the Land Buy Back Program.

Question 4. Are all the GIS maps created for the Land Buy Back Program able to be used in conjunction with TAAMS and other Department land use programs, or are there legislative changes Congress can do to ensure the data is usable across programs?

Question 5. Would the Department having any concerns with Congress passing legislation to allow BIA to store electronic wills?

Question 6. Would the Department have any concerns with Congress passing legislation to centralize where wills and estate planning documents are stored?

Question 7. At the end of the Land Buy Back Program 29,975 "whereabouts unknown" account holders remained. Has there been any progress made on this list? And if so please provide the updated numbers.

Question 8. The Land Buy Back Program took any land interests acquired through voluntary sales and placed it into trust for the benefit of the tribe of jurisdiction.

8a) What statutory changes would need to be made to ensure that restricted fee was also an optional land status for voluntary land purchases? Would the Department support a process that would allow land interests purchased to be classified as restricted fee? Why or why not?

Questions Submitted by Representative Grijalva

Question 1. Could you explain the impact of the Land Buy Back Program on bringing new infrastructure to Indian Country, particularly on highly fractionated reservations?

Question 2. How does DOI assess and prioritize fractionated interests in lands for acquisition in its re-established Indian Land Consolidation Program? Additionally, does the Department take into consideration instances where the land can be immediately put to beneficial use?

Question 3. What is the current estimate of departmental costs associated with managing fractionated interests in land? And of that estimated cost to purchase remaining fractionated interests, how much is needed for administrative costs compared to land purchases? How do you anticipate that will change over the next 10 years?

Question 4. What could be the potential cost advantages or disadvantages of hiring third-party contractors to assist with program implementation?

Question 5. How many tribal allotments pass through probate in an average year? How successful has estate planning been in reducing this number? What is DOI doing to reduce the probate backlog?

Question 6. How does DOI ensure that tribes and tribal members are aware of DOI probate processing and estate planning services?

