



The Confederated Tribes of the Colville Reservation



Prepared Statement of the Honorable Michael O. Finley, Chairman
Confederated Tribes of the Colville Reservation

House Committee on Natural Resources,
Subcommittee on Indian and Alaska Native Affairs

Oversight Hearing on “Implementation of the *Cobell* Settlement: Missed
Opportunities and Lessons Learned”

April 3, 2014

Good afternoon Chairman Young, Ranking Member Hanabusa, and members of the Subcommittee. My name is Michael Finley and I am the Chairman of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “CCT”). I also serve as the First Vice President of the National Congress of American Indians and the President of the Intertribal Monitoring Association on Indian Trust. I appreciate the opportunity to testify today in my capacity as Chairman of the Colville Tribes on the implementation of the *Cobell* settlement and the Department of the Interior’s Land Buy-Back program.

My testimony will focus on how the *Cobell* settlement came to be approved and how many of the issues that tribes have raised about the Buy-Back program could have been resolved had the changes that tribal leaders requested been incorporated into the settlement four years ago. I also have three specific recommendations for the Department and the Subcommittee to consider to improve the Buy-Back program.

First, I would like to provide some background on my people and our land. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of twelve aboriginal tribes and bands from all across the plateau region of the Northwest and extending into Canada. The present-day Colville Reservation encompasses approximately 1.4 million acres and is located in north-central Washington State. The Colville Tribes has nearly 9,500 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the CCT’s members live on or near the Colville Reservation, which has more than 800,000 acres of forest land.

Indian Tribes and Organizations Wanted the *Cobell* Settlement Changed

When the *Cobell* settlement was still being considered by Congress four years ago, Indian tribes and tribal organizations requested certain changes to the settlement. These included changes to the land consolidation portion of the settlement and the Buy-Back program. The Indian Land Consolidation Act allows tribes a role in administering the Buy-Back program but it explicitly

prohibits Indian tribes from contracting or compacting the program under the authorities in the Indian Self-Determination and Education Assistance Act (“ISDEAA”).

In an April 27, 2010, letter to tribal leaders, Senate Committee on Indian Affairs Ranking Member John Barrasso sought input on five changes to the *Cobell* settlement. The changes included capping pre-settlement date attorneys’ fees, expenses, and costs at \$50 million; limiting any “incentive awards” under the settlement to named plaintiffs to actual, unreimbursed out-of-pocket expenses incurred by that plaintiff; having the court-appoint a Special Master to select the bank for holding the settlement funds; and setting aside \$50 million from the \$1.412 billion settlement monies as a reserve fund to address specific instances where the Special Master determined the formula payment is insufficient or unfair. The final change Senator Barrasso proposed in his letter would have required the Department to consult with Indian tribes in planning, designing, and setting the priorities for the land consolidation portion of the settlement and to allow Indian tribes to implement the Buy-Back program under the ISDEAA.

The Administration and the *Cobell* class representatives vigorously objected to the changes. It seemed that they both wanted to create the perception that asking questions about the settlement – let alone suggesting changes – meant you were in favor of “killing” the settlement. To the contrary, the tribal leaders and organizations that supported changing the settlement did so out of a desire to ensure fairness and adequate protections for their constituents, Indian beneficiaries generally, and tribal governments.

The Affiliated Tribes of Northwest Indians (“ATNI”), the Great Plains Tribal Chairman’s Association, and the National Congress of American Indians all passed resolutions or otherwise expressed support for the proposition that changes to the *Cobell* settlement must be made. All three of these entities referenced contracting or compacting the Buy-Back program under the ISDEAA in the changes they endorsed. Based on this tribal support, then-Ranking Member Doc Hastings proposed an amendment that would have incorporated the changes adopted in the ATNI resolution and Senator Barrasso’s April 27 letter. The House majority at the time did not allow that amendment to be considered on the House floor.

Congress ultimately approved the settlement as part of the Claims Resolution Act of 2010 and the foregoing is now a historical footnote. As enacted into law, \$1.9 billion was appropriated for the Buy-Back program. It is ironic, however, that many of the issues and concerns that tribes have expressed about the Buy-Back program over the past year could have been addressed had the parties to the settlement incorporated the changes that tribes requested.

For example, nearly every tribe is concerned about the prospect of unspent funds appropriated for the Buy-Back program reverting back to the U.S. Treasury after ten years. Many tribes are similarly concerned about the level of involvement they will be allowed to have in implementing the program. These would not be issues today had the *Cobell* settlement been amended four years ago to allow tribes to contract or compact the program under the ISDEAA.

The Colville Tribes' Implementation of the Buy-Back Program

In the Buy-Back program's updated implementation plan, the CCT is listed as number 15 out of the 40 tribes identified for initial deployment of the program. The plan states that the CCT will have approximately \$25.6 million available to purchase fractionated interests. For decades, the CCT has carried out its own land consolidation program using tribal funds and fully expects to spend all of this money. In 2013 alone, the CCT purchased \$6.5 million of fractionated interests from tribal members using proceeds from its \$193 million trust mismanagement settlement with the United States. Demand on the part of tribal members to sell their land to the CCT has always been high and we expect this to continue to be the case going forward.

The CCT is currently verifying the accuracy of the trust land ownership records on the Colville Reservation. On most reservations, these records are not accurate. The CCT wants to ensure that any offers to purchase Colville tribal members' fractionated interests will accurately reflect the members' landholdings. The CCT is also attempting to obtain certain information so that it can ascertain which tracts of land it will prioritize for purchase. The CCT has expressed its intent to the Department to enter into a cooperative agreement to administer as much of the Buy-Back program as possible.

Recommendations

Based on the work we have done so far, we offer the following recommendations to improve the Buy-Back program:

(1) Allow Tribes to Invest their Allocated Buy-Back Funds

For the ten year duration of the program, the \$1.9 billion appropriated for the Buy-Back program will sit in a non-interest bearing account and gain no value over time. For whatever reason, it did not occur to the architects of the settlement that the Department should be able to invest the \$1.9 billion and retain the earnings for the program. The ISDEAA allows funds for contracted or compacted programs to be transferred directly to tribes, at which point the tribes can invest the funds themselves. Again, had the ISDEAA change been incorporated, this would not be an issue.

It only makes sense to maximize the amount of funds available to purchase fractionated interests by allowing this large appropriation to earn value over time to increase the number of interests that can be purchased. The ten year clock has already begun ticking for the \$1.9 billion principal to be spent. Every fiscal year that goes by without this money being invested represents money and opportunity lost.

It would require congressional action for the Department to be able to invest the Buy-Back appropriation and retain the earnings. Tribes, however, can invest their allocated purchase ceiling funds if the funds could be transferred directly to them and not held by the Department. The details of such an arrangement could be included in an escrow agreement or as part of a

cooperative agreement. The CCT intends to propose this as part of its cooperative agreement as a means of maximizing the funds available to consolidate its land base.

(2) Make Land Data More Readily Available at No-Cost to Tribes

The BIA's system for recording title to Indian trust lands is called the Trust Asset and Accounting Management System, or "TAAMS," as it is commonly referred. The TAAMS system was developed by CGI Federal, the same contractor that developed the healthcare.gov website that received widespread media attention last fall.

The CCT understands that through some arrangement, CGI Federal retains an ownership interest in the TAAMS system. While a small number of tribes like the CCT have access to the TAAMS system, the system is not designed to make extrapolation of data user friendly. CGI Federal has been separately marketing itself to Indian tribes as an entity that can obtain data from the TAAMS system. The CCT will likely have to pay CGI Federal more than \$20,000 to obtain the information and data that it needs to implement the Buy-Back program.

This is an absurd result and should never have been allowed to happen in the first instance. We encourage the Subcommittee to explore how the arrangement between the Department and CGI Federal began and what, if anything, can be done right now to ensure that tribes do not have to pay CGI Federal or other third parties for data that should be readily available.

(3) Allow Tribes to Perform All Land Acquisition Functions

The Buy-Back program is divided into four phases: outreach, land research, valuation, and acquisition. It is imperative that those tribes with the capacity be allowed to perform all phases, but especially the acquisition phase. Tribes are in the best position to consummate land sales and issue deeds to close out the transactions. Tribal control over the acquisition phase will also allow tribes to exchange tribal trust land for fractionated interests. If individuals are reluctant to sell because they want to maintain an ownership interest in Indian land, this type of an exchange would allow for those individuals' interests to be consolidated while giving them an interest in tribal land in return. The key to these activities is tribal control over the acquisition function.

I appreciate the Subcommittee's consideration of this testimony. We look forward to working with the Subcommittee and the Department on these and other issues. At this time I would be happy to answer any questions the members of the Subcommittee may have.
