

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

Examining the Opportunities and Challenges of Land Consolidation in Indian Country

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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 land ownership 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-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.

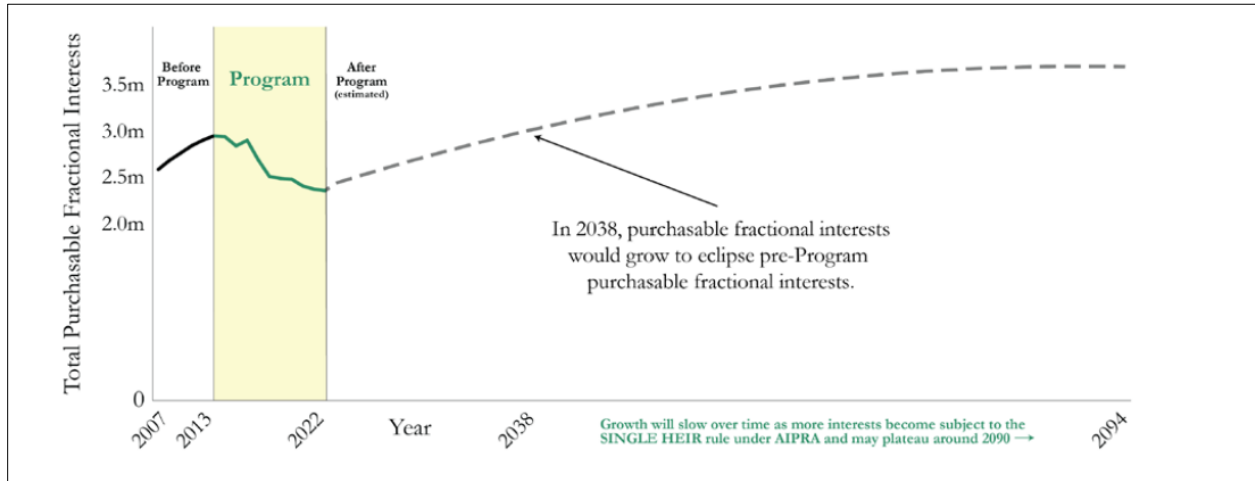
In addition to land consolidation through voluntary sales, other ideas for addressing reduction of fractionation and its impact should continue to be discussed going forward. Several ideas were brought to the Department's attention in the last few years. Among them are facilitating co-owner purchases 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)