



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 31 2024

The Honorable Harriet M. Hageman
Chair
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Hageman:

Enclosed are responses to questions for the record submitted to the Department of the Interior following the Subcommittee's January 30, 2024 oversight hearing titled, "*Examining the Opportunities and Challenges of Land Consolidation in Indian Country*." These responses were prepared by the Bureau of Indian Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela Barkin
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Teresa Leger Fernández
Ranking Member

Questions for the Record
House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
Oversight Hearing titled, "*Examining the Opportunities and Challenges of Land Consolidation in Indian Country.*"
January 30, 2024

Questions from Chairman 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?

Response: Fractionation of Indian trust or restricted lands has been a problem since the passage of the General Allotment Act of 1887. There are no quick fixes to address an issue that has evolved and grown exponentially for over 130 years. Land consolidation will continue to be a long and arduous process that may eventually be achieved through a combination of actions. The Department of the Interior (Department) has grappled with fractionation and its effects for decades and continues to brainstorm new and unique ideas to solve the problem. The Department remains committed to exploring solutions while not engaging in takings of real property interests.

Continued funding for the current Bureau of Indian Affairs (BIA) Indian Land Consolidation Program will allow for acquisition of fractionated interests by purchasing fractionated interests from willing sellers and titling those interests in the Tribe with jurisdiction over the interest. This is a cost-effective investment because once an interest is acquired and transferred to Tribal trust ownership, the fractionation process is permanently halted. The Department continues to advocate for increased funds because resources are a key tool to address the challenges of fractionation.

Tribes are uniquely positioned to use their own funds to purchase interests during the probate process when interests are available for purchase pursuant to the schemes created by the American Indian Probate Reform Act (AIPRA). Certain Tribes have land acquisition funds available for such purposes and can choose to be proactive in the acquisition of fractional interests from willing sellers.

The intestacy schemes created in AIPRA are designed to limit fractionation within certain parameters. However this approach is incredibly slow, and it will take years before there is a measurable difference under the AIPRA scheme alone. Under these AIPRA provisions, when an individual owns a fractional interest that is less than five percent of total tract ownership, and dies without a will, fractionation of that interest will stop because the interest may only be distributed to one heir (or the Tribe with jurisdiction if there are no eligible heirs). Interests that

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are five percent or more of total tract ownership will continue to fractionate until they reach the five percent threshold for application of the AIPRA rule.

Finally, it is important to note that the increased use of wills does not necessarily limit fractionation. Every single person is entitled to draft a will. Wills may prevent the further fractionation of Indian land if the devise is made to one person. Nevertheless, most individuals divide their property, including their trust property, equally between their children. Thus, when a Tribal member with a small fractional interest writes a will and directs that the interest be equally divided amongst all of the children, fractionation is continued.

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.

- a. Would the Department consider a similar sustainability mechanism in any future land consolidation efforts?**

Response: No. The administrative costs outweigh the benefits. The Department has spent significant time and resources to address the issues that arise from liens on Indian trust land. Revenue from leases on the land that were subject to the liens did not provide sufficient income to create a revolving fund for additional land purchases. After the lien is satisfied, all income generated from the land must be distributed to the Tribal landowners. In the 2009 Omnibus Appropriations Act (P.L. 111-8), Congress ended funding for the original Land Consolidation program due to the insufficient revenue stream generated from the leases of fractional interests acquired. The original scheme was to create a self-generating revolving program that would not require appropriations. Lessons learned from the original Land Consolidation Program and the concept of a self-generating revolving fund resulted in the *Cobell* Land Buy Back Program for Tribal Nations (LBBP) specifically excluding that concept from its program.

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

Response: The BIA has spent time exploring policies to ascertain whether it is feasible to create a sustainable program and determined that policy changes would not create a sustainable source of funding. Without an influx of funding to acquire fractional interests, including necessary and appropriate administrative and operational funding, it would be difficult to establish and maintain a sustainable source of federally controlled and administered funding. Accordingly, the 2025 Budget request includes \$11 million, a \$7 million increase above the 2024 Enacted level,

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for the current Indian Land Consolidation Program.

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.

- a. 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?**

Response: The GIS workflows and data produced for the LBBP have served as the foundation for the continued process of mapping lands within all of Indian Country. The BIA has continued to make significant updates to its GIS data. This land data is available internally to BIA as parcel data and is publicly viewable online as tract data. The public tract viewer allows Tribes to quickly determine the location of particular tracts of allotted land but does not include details such as the current level of fractionation. To address this, the BIA has also created a workflow for the creation of maps, containing parcel data, utilized by the current Indian Land Consolidation Program in the BIA’s continued efforts to reduce fractionation. Tribes may request more detailed parcel level data through their assigned BIA Regional Geospatial Coordinator. The BIA requested in the FY 2025 Budget an additional \$573,000 in Operation of Indian Programs funding to ensure that the current Indian Land Consolidation Program has the ability to enhance and maintain the most up-to-date GIS data for the Tribes to access.

- b. 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.**

Response: Legislation is not needed to allow access to the BIA tract viewer maps. These maps are available on a public-facing website that does not require authentication. There is no personally identifiable information (PII) contained within the BIA tract viewer. The BIA Office of Trust Services (OTS) is exploring the implementation of other technologies to improve collaboration with Tribes while still complying with security policies.

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?

Response: Legislation is not needed to facilitate data usability of the BIA tract viewer maps. The

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maps generated for the LBBP were created from the Department’s Trust Asset and Accounting Management System (TAAMS) data parcelization process. TAAMS is not available for public access as it contains sensitive PII for all account holders that is protected by the Privacy Act. TAAMS also contains confidential and proprietary Tribal information that must not be shared with other Tribes and users. As discussed above, the BIA tract data is available online for reference only. The BIA tract data is shared to an open data page hosted by the BIA OTS and available here: <https://biamaps.geoplatform.gov/biatracts/>. The data is also hosted in the BIA ArcGIS Portal and available to all BIA programs for use in their processes.

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

Response: Yes. The Department does not have the capacity to store any wills, including electronic wills. To comply with the Department’s policies for protecting personally identifiable information, there would need to be a secure site to ensure that the will would not be tampered with or deleted or provided to an individual and/or entity who should not receive it. Storing of wills would necessitate a new system of record resulting in the need for a System of Records Notice (SORN), a method for logging the wills, and the possibility of having to release the will(s) under a Freedom of Information Act (FOIA) request. Development of such a system of records would require significant upfront investment resources and require ongoing maintenance costs, including staffing, personnel training, and system maintenance and updates as technology evolves.

Storage of wills in and of itself does not solve a “will” problem. Individuals are free to write a will each and every day if they so choose. When probating trust property, judges in the Office of Hearings and Appeals (OHA) are obligated to ensure that a will is an original document. This is especially important when a will is contested. Consequently, even if the Department had the capacity to store a will, that does not automatically mean that other wills will not surface during the probate process. An electronic will does not mean that it is the most current will, a valid will, or that it will have more probative value than a handwritten will presented to the Court during a hearing. Furthermore, electronic wills may not be valid in a court of law as most states do not recognize an electronic will as a valid form of a last will and testament.

There is also an issue of broadband access in Indian Country, which limits the ability of Indian Country to access the internet, much less have the ability to create an electronic will that is properly executed and provide such a will to the Department. According to several recent studies ([Estate Planning Industry Statistics: Market Data Report 2024 \(worldmetrics.org\)](#); [Only 26% Of Americans Have Created An Estate Plan, Survey Finds \(fa-mag.com\)](#); [Writing a will is becoming less popular. Why Americans are opting out \(usatoday.com\)](#)) approximately 70

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percent of all Americans do not have a will. The number is most likely higher in Indian Country due to Tribal customs and beliefs.

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

Response: Yes. The Department would have tremendous concerns with Congress passing legislation to centralize the storage of wills and estate planning documents. Typically, lawyers who draft wills and estate planning documents for their clients assume the responsibility for storage of such documents, but this practice may vary throughout the United States and wills may be returned to the testator for retention. Probates are drafted and adjudicated locally making the concept of national centralized will storage impractical and logistically difficult. If the Department was required to store wills and estate planning documents, resources would be diverted from other underlying trust responsibilities that are the priorities of the Department.

The administrative burden of maintaining the wills and estate planning documents would be extraordinarily onerous for the Department. Wills and estate planning documents are “living documents” during the lifetime of the testator – meaning that the testator may change the will frequently until their death. As “living documents” they must be stored in a secure location, such as a safe. Prior to submission to the Department for the purposes of probating an estate, wills are not federal records. After submission of a will to the Department, it becomes a federal record. Storage of wills and estate documents would mandate the creation of a system of record and the development of a SORN. These documents would then be subject to the possibility of release pursuant to a FOIA request. Few individuals envision having their testamentary wishes discoverable and released to the public through a FOIA request.

Wills and estate planning documents are living documents and are ineligible to be decommissioned to be sent to and stored at the American Indian Record Repository (AIRR). The AIRR is an archive facility located in Lenexa, Kansas that is a branch of the National Archives. The records stored at the AIRR have been decommissioned and are no longer active. They are housed at the AIRR pursuant to the federal regulations that require they be kept in perpetuity. In order for records to be sent to an archive facility, they must be decommissioned. Because wills and estate planning documents cannot be decommissioned, the Department will need to secure ever-increasing separate, secure physical storage for the material.

Moreover, there are 574 federally recognized Tribes in the United States. Each Tribal member who chooses to write a will must comply with Tribal and/or state laws depending upon where they live and are enrolled and whether the will impacts both trust and non-trust property. Furthermore, upon the death of a Tribal member, that member may have assets that require filing

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probates in federal, state, and/or Tribal courts, resulting in three separate and distinct probates. If that Tribal member had a will, that will must be used in each court adjudicating a probate.

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.

Response: The “whereabouts unknown” (WAU) list is one that remains in constant flux and the precise number of WAUs changes daily. Every time payments or other correspondence is returned to the Bureau of Trust Funds Administration (BTFA) marked as undeliverable, that account holder is added to the WAU list. Many of those individuals come forward when they realize that they have not received their funds and will contact BTFA to update their address information and they are then removed from the WAU list. The account holders have an affirmative responsibility to change their address of record with the BTFA. Failure to do so results in the account becoming a WAU account. The BTFA manages over 494,795 accounts. Through regular and intensified efforts during the LBBP, BTFA located 52,965 WAU account holders, and 28,975 WAUs existed at the date the LBBP ended. As of September 30, 2024, there are 70,384 WAU account holders. WAU information is available on the BTFA website (<https://www.doi.gov/ost/search-unclaimed-accounts>). BTFA continues its efforts to locate WAU account holders and updates their account information as individuals are located. However, each time payments or other correspondence is returned to BTFA and marked as undeliverable, that account holder is added to the WAU list. During the last 10 years, individual Indian landowners have become familiar with the opportunity to sell their fractional land interests and are more proactive in updating and maintaining current contact information.

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.

- a. 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?**

Response: The Indian Land Consolidation Act permits the acquisition of restricted interests and requires those interests to immediately be held in trust. Accordingly, the LBBP was effective in consolidating such interests at several locations and placing those interests into trust status.

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Questions from Ranking Member 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?

Response: Indian land consolidation has enabled economic development and infrastructure improvements across the country; examples below.

Pine Ridge – Agriculture Improvements.

The LBBP’s success in transferring fractional interests to Tribal management at Pine Ridge supported agricultural improvements under development by the Tribe. For instance, individual landowners leased land now under Tribal management, making it possible for the Loneman StrikeForce project to solve one of the Reservation’s most serious problems – a lack of livestock water. The Tribe worked with the United States Department of Agriculture Natural Resources Conservation Service program to assist landowners in making improvements to provide a more reliable water source for livestock. Additional improvements included fences for conservation purposes and/or management plans.

Navajo – Infrastructure Improvements.

Navajo was able to improve a right-of-way within its Casamero Lake Chapter where residents were driving on dirt roads. Previously, the Tribe was unable to move forward with plans to pave the roads because it was unable to find the approximately 400 landowners needed to approve the improvements. Thanks to the LBBP’s consolidation, the Tribe no longer needed to locate hundreds of individual landowners and was able to complete the construction of the paved road.

Makah – Recreation Area.

As a result of LBBP purchases, the Makah Tribe was able to build the Cape Resort Cabins and Camping Recreational Vehicle facility which has generated further income for the Tribe.

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?

Response: Locations are selected based on appraisal availability and land values, level of fractionation, and Tribal/landowner interest. With limited resources, locations with comparatively more modest land values, and land that is amenable to efficient and cost-effective mass appraisal methods, are the most logical target for cost-effective voluntary acquisition efforts. The ability and capacity of the Appraisal and Valuation Services Office (AVSO) to

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provide values at those locations is a consideration. AVSO is supportive of mass appraisal methodologies and is currently building its staff and expertise in this area. Some Tribes are now working directly with AVSO to keep mass appraisals current on an ongoing basis, and those locations represent a logical and cost-effective target for voluntary acquisition. Locations where the Tribe has expressed interest in and readiness for land consolidation efforts, as well as locations where there are a significant number of individual Indian landowners who have proactively expressed their willingness to sell, are prioritized.

Maintaining maximum flexibility to accommodate the land acquisition priorities of Tribes while minimizing administrative costs, the BIA anticipates making offers to landowners with fractional interests equal to or greater than five percent of total tract ownership. These are the interests that will continue to fractionate until they reach the threshold for application of probate restrictions on inheritance under AIPRA. Voluntary land acquisition efforts will thereby complement existing statutory provisions for slowing future fractionation and achieve a greater reduction in the overall rate of continued fractionation at a faster pace. As each interest is purchased and titled in the name of the applicable Tribe, those interests are consolidated and protected from further fractionation. At each location selected for implementation, the BIA will also coordinate and collaborate with the appropriate Tribe and incorporate the Tribal acquisition priorities to the fullest extent practicable.

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?

Response: The costs associated with the impacts of allotment laws and policies are sweeping.

A substantial portion of the combined BIA Trust Realty Services budget and the BTFA budget (together totaling \$265.9 million in appropriations for Fiscal Year 2024) was used for managing fractionated land and conducting related activities.

Management includes recordkeeping responsibilities for every fractional interest; notification, consent, and transaction processing requirements in connection with any income generating action on fractionated land (e.g., lease, timber sale, right-of-way, easement); financial trust fund management including the collection, investment, disbursement, reconciliation, and reporting of all income generated on fractionated land; and a statutory requirement to probate the estate of every individual Indian landowner, which involves preparation of a family history and property inventory, a hearing before an OHA probate judge, distribution of the estate to heirs, and update of title records in accordance with the probate order.

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The Department believes that the cost to purchase all of the remaining fractional interests would run into billions of dollars. 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 2016, former Secretary of the Interior Sally Jewell reiterated Departmental concerns that the Consolidation Fund established as a result of the *Cobell* Settlement would not be sufficient to purchase all fractional interests, and that the value of remaining fractionated land would still likely be several billion dollars in addition to the *Cobell* Settlement resources (See: www.doi.gov/sites/doi.gov/files/uploads/2016_buy-back_program_final_0.pdf).

The current Indian Land Consolidation Program currently keeps administrative costs minimized by developing and using highly efficient and cost-effective processes and procedures for acquiring fractional land interests, including a streamlined and automated system for processing voluntary sales and mass appraisal methods. Consequently, administrative costs for BIA’s continued land consolidation efforts are anticipated not to exceed 10 percent of available appropriated funding.

The costs associated with both managing fractionated interests and administering purchase of the fractionated interests are expected to grow exponentially 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?

Response: When BIA created the current Indian Land Consolidation Program, there was an intentional effort to use the existing infrastructure created for implementation of the LBBP. Using existing infrastructure enabled the BIA to seamlessly and efficiently transition from LBBP to the current stand-alone Indian Land Consolidation Program using highly efficient processes and procedures implemented by experienced realty staff. The BIA’s well-established and dedicated land consolidation team makes it possible to acquire fractional interests quickly and cost-effectively, while providing outstanding customer service to participating individual Indian landowners. Hiring third-party contractors would result in a major disadvantage to the current Indian Land Consolidation Program due to the substantial time and cost involved in obtaining security clearances, training contract staff on the intricacies of Indian land ownership and title, and on using TAAMS for processing acquisitions. While there may be potential for efficiency increases through the use of third-party contractors, such potential efficiencies would be difficult to realize while diverting dedicated staff to train the third-party contractors without additional resources being made available for the hiring of such third-party contractors.

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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?

Response: Tribal allotments are not probated since they belong to a Tribe and the Tribe is the permanent entity. Only individually-owned allotments are probated.

Estate planning does not reduce the probate backlog. Each decedent who owns an interest in trust land must have their estate probated. The existence of a will does not eliminate the need for an estate to be probated. Furthermore, whether a decedent has a will or not, the time to prepare the probate package does not change. The process to assemble the probate package remains the same in cases of testate and intestate estates. While a will can be an important document for the OHA to distribute a decedent’s trust assets, a will does not hasten or reduce the time it takes to complete the probate process. It is also important to note that OHA’s annual funding levels have been flat since FY 2021, resulting in a decrease of case productivity to less than 3,000 per year.

In FY 2022, the BIA implemented a new probate tracking system that minimized dual data entry and digitized the probate package within DOI offices that participate in the probate process. BIA will continue to evaluate how this new system will affect processing of the estate package. However, because the system was implemented during the pandemic, comparison of the number of packages prepared and submitted for adjudication are skewed. After FY 2024, a comparison to previous years will provide better insight into the effects of the new system.

The biggest challenge for the BIA Probate program is the collection of accurate family history and source documents. Often, the decedent’s family is hesitant to mail original source documents. Source documents include birth certificates, death certificates, marriage certificates, divorce documents, name change documents, etc. Within existing resources, the BIA is researching creative avenues to collect source documents from family members. The BIA is also in the planning stages of utilizing a secure online portal for collection of source documents to eliminate the need for family to mail them to the agency or personally deliver them to a BIA office.

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

Response: Estate planning is typically provided by licensed attorneys who specialize in trusts and estates. Departmental staff is not equipped, nor are they authorized, to provide legal advice to the public. BIA does not provide estate planning services but does provide information about

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AIPRA. BIA has brochures and pamphlets discussing the probate process available for distribution to the public at all BIA offices and on the BIA website. BTFA also provides information about AIPRA and various options through the local Fiduciary Trust Officers and on its website.