



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

COORDINATION OF EFFORTS TO ADDRESS INDIAN LAND FRACTIONATION




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JAN 04 2011

Memorandum

To: David J. Hayes
Deputy Secretary

From: Mary L. Kendall 
Acting Inspector General

Subject: Evaluation – Coordination of Efforts to Address Indian Land Fractionation
Report No. WR-EV-BIA-0002-2010

In December 2009, Department of the Interior (Department) Secretary Ken Salazar announced the settlement of the long-running and highly contentious *Cobell* class-action lawsuit regarding the U.S. government's trust management and account of over three hundred thousand individual American Indian trust accounts. Among other things, the settlement provides for a \$1.9 billion fund to be established for the voluntary buy-back and consolidation of fractionated land interests. In light of this announcement, the Office of the Inspector General initiated an evaluation of the Department's land consolidation program, recognizing that the settlement must still be approved by Congress. Congress did approve the settlement on December 8, 2010.

Our objective was to identify challenges to implementing the settlement and solving the long-standing problem of Indian land fractionation. Fractionation is the result of allotments that have been divided among heirs through probate. With each generation, the amount of fractionation increases. We identified two primary opportunities for the Department to ensure successful land consolidation efforts: improving communication and identifying needed resources. This evaluation is the first in a series of advisories on the Indian land consolidation provisions of the settlement. Future advisories will focus on specific areas of the Indian land consolidation process, such as Appraisals, Title, and Probate.

We interviewed officials at the Department, Bureau of Indian Affairs (BIA), and Office of the Special Trustee for American Indians (OST) whose coordination is necessary for the effective consolidation of Indian lands. We also interviewed officials at the Office of Management and Budget (OMB) and Intertribal Monitoring Association on Indian Trust (ITMA) to gain additional perspectives on current and future Indian land consolidation goals and outcomes (see Appendix 1 for a listing of all offices contacted). We conducted this evaluation in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

The draft report contained six recommendations directed to the Deputy Secretary. In the Department's December 3, 2010 response to the draft report (Appendix 2), the Deputy Secretary concurred or partially concurred with all recommendations. Based on the response, we requested

additional information for all of the recommendations (see Appendix 3 for the status of the recommendations).

We respectfully request a written response to this report, number WR-EV-BIA-0002-2010, within 30 days. The response should provide information on actions taken or planned to address report recommendations, target dates, and titles of the officials responsible for implementation. Please address your response to:

Ms. Kimberly Elmore
Assistant Inspector General for Audits, Inspections, and Evaluations
U.S. Department of the Interior
Office of Inspector General
1849 C Street, NW, MS 4428
Washington, DC 20240

If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 202-208-5745.

Attachment

Background

The General Allotment Act of 1887 divided Tribal land into parcels and allotted them to individual Indians. At that time, each Indian owned 100 percent interest in their allotment. Because wills were not widely used, smaller and smaller undivided interests descended to successive generations (see Figure 1). Today, some of the original allotments are owned by as many as 1,000 individual heirs.

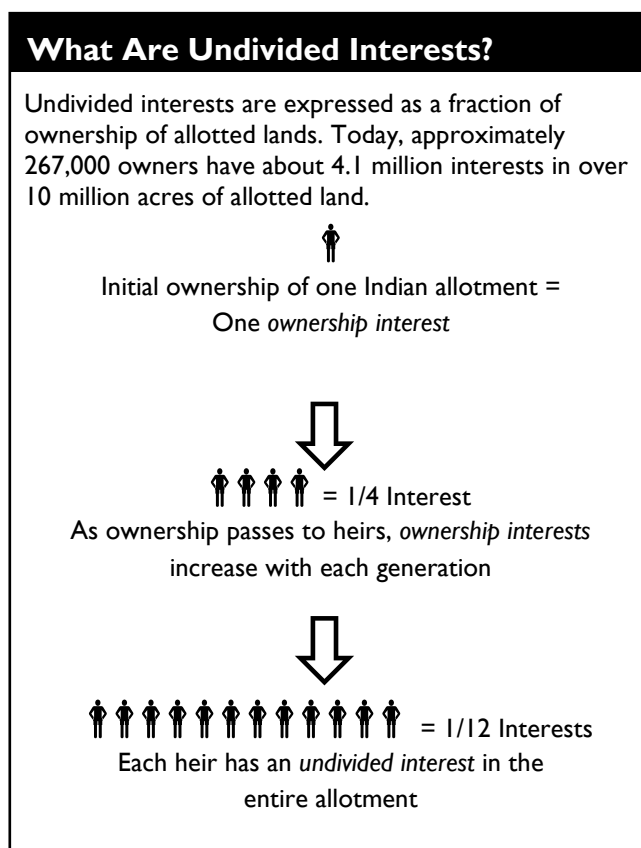


Figure 1. Explanation of undivided interests.

While responsibility to American Indians has consistently been identified by the OIG in recent years as a top management challenge for the Department, the Federal Government has long acknowledged the resulting complexity from fractionation on Indian trust operations. In a Statement from the Chairmen of the House Committee on Interior and Insular Affairs, 1960:

For many years we have recognized that one of the most serious problems facing our American Indian population is that of [inherited] land. With each passing generation the difficulties of solving this problem multiply and if some solution is not forthcoming it will be so acute by the turn of the century that the Federal Government will be unable to bear the burden of handling the administration of the land and the Indians will find their estate so fractionated that their utilization will be nearly impossible.

Fractionation has two primary negative impacts: it limits the Tribes' productive use of the land, and it is costly to the Federal Government to administer the approximately 4.1 million fractionated interests on 99,000 fractionated tracts. Unless a Tribe owns at least a majority interest in a fractionated tract, the Tribe must seek the approval of other owners in order to lease the tract for economic development purposes. This need for approval has essentially stopped economic development on some tracts of land. In addition, a significant portion of the Bureau of Indian Affairs' (BIA) and the Office of the Special Trustee for American Indians' (OST) budgets is expended to administer fractionated interests, as there are approximately 267,000 Individual Indian Money account holders. If fractionated interests are consolidated, these financial resources could be allocated to serve other Tribal needs.

In recent years, Congress has passed legislation aimed at slowing the rate of fractionation. For example, the American Indian Probate Reform Act (Act) of 2004 restated Congress' commitment to solve fractionation. It also stated Congress' policy to prevent further fractionation of trust allotments made to Indians, consolidate fractionated interests and ownership of those interests into useable parcels, consolidate fractionated interests in a manner that enhances Tribal sovereignty, promote Tribal self-sufficiency and self-determination, and reverse the effects of the allotment policy on Indian Tribes. The Act broadened the applicability of the Indian Land Consolidation Program (Program) and provided the Department and landowners with new consolidation tools, such as gifting, selling, and exchanging interests with co-owners.

Although BIA has made progress, the Program has never been funded at a sufficient level to significantly decrease the rate of fractionation Nationwide. The largest appropriation the Program received in a single year was about \$35 million in fiscal year (FY) 2005. The pending settlement, however, provides the potential for funding that could make a significant impact.

Opportunities and Challenges

Although fractionation may not be eliminated entirely by the settlement, it presents an opportunity for significantly improving the long-standing problem of Indian land fractionation. While some offices are creating plans specific to their offices, to take full advantage of this opportunity, a coordinated planning effort among all of the parties involved is critical. To date, the Department has not developed a comprehensive plan that will guide its efforts to reduce Indian land fractionation.

We found two main opportunities for the Department to ensure success in this endeavor: improving communication and identifying needed resources. With a comprehensive approach among the many offices involved (see Figure 2), the Department stands a far greater chance of successfully completing land valuations, title conveyance, and purchases at probate, which are all integral parts of resolving fractionation.

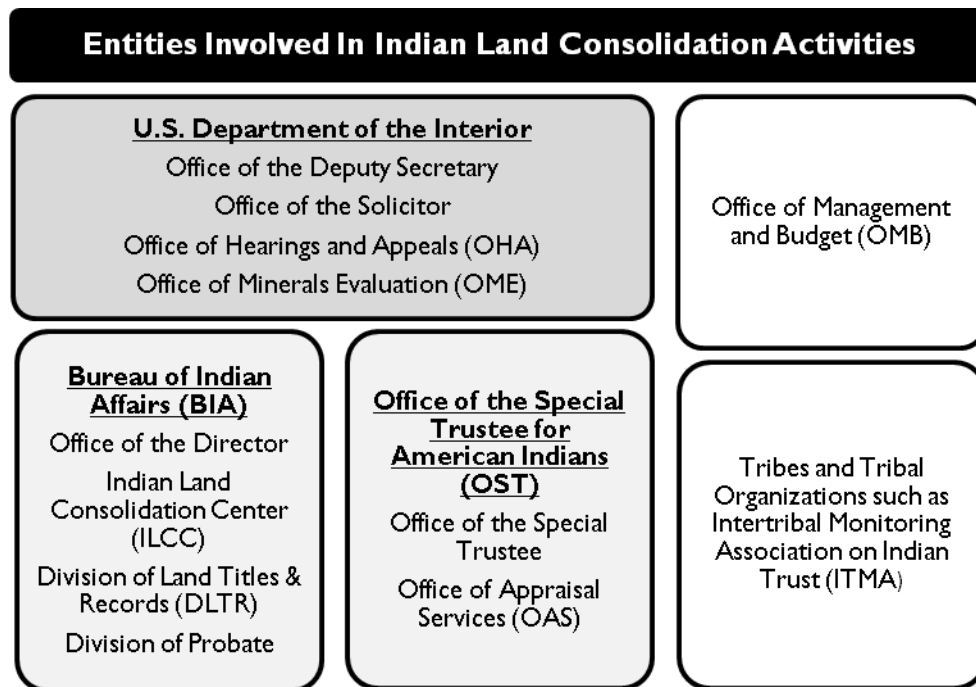


Figure 2. Entities involved in Indian land consolidation activities.

Communication

Although the Deputy Secretary's Office and the Office of the Solicitor have been hesitant to discuss their plans because of a court order that limits communications regarding the sale or transfer of land, and the desire to not appear presumptuous about funds yet to be appropriated, more sharing of information could be done internally. For example, specific information such as the extent of fractionation, tract identification, and tract valuation has been requested by the Deputy Secretary's Office from separate offices within BIA and OST, without providing context for the request. Thus, these individual offices do not have clear insight into the Department's efforts and overall strategy for Indian land consolidation activities.

Strategic planning has been conducted independently within BIA's Indian Land Consolidation Center (ILCC), which heads the Department's land consolidation efforts. While such plans include an extensive amount of work in terms of Program goals and operations, they were created independently within ILCC and without input from other offices such as OST's Office of Appraisal Services (OAS) and BIA's Probate and Land Titles and Records offices. Each of these offices plays a critical role in land consolidation activities such as land valuations, purchases of undivided interests at probate, and title conveyance. Officials from these offices indicated to us that they could see the benefit if these ILCC plans were shared.

Other entities outside the Department will be affected by the settlement. Officials in the Office of Management and Budget (OMB) have expressed a desire to provide input on the strategic plan to ensure that the Administration's goals, such as Tribal involvement and performance measures for success, are reflected in the plan. In addition, Tribes and Tribal organizations, such as the Intertribal Monitoring Association on Indian Trust (ITMA) indicated

they could benefit from being involved in the strategic planning process and more effective outreach, including Program purpose and activities, as well as estate planning and development of reservation-wide land use plans.

ILCC has made recent strides to include the many offices into strategic planning. For example, in July 2010, ILCC initiated a meeting with BIA's Division of Probate, the Office of Appraisal Services (OAS), the Department's Office of Minerals Evaluation (OME), and the Office of Hearings and Appeals (OHA) to discuss future strategies for purchases of undivided interests at probate. BIA's Division of Probate prepares probate packages, while OAS and OME provide surface and subsurface valuations for the undivided interests, and OHA rules on probate decisions. In a 2-day meeting, these groups were able to identify obstacles involved in the current process and identify means of mediating and streamlining steps for future purchases at probate. The meeting resulted in a short-term goal of sharing with Administrative Law Judges how appraisals are prepared and a long-term goal that would increase standardization through OHA's rulemaking process. Representatives from these offices are continuing to meet to streamline appraisal processes.

In addition to opportunities to share strategic planning activities, we also identified opportunities for improvement of day-to-day information sharing among offices. Particularly, we found ineffective sharing of information among BIA and OST offices. For example, while often located in close proximity to each other, these offices must follow certain procedures before information can be shared. We believe this ineffective sharing of information is the result of a policy that requires information to be approved by the OST's Chief of Staff before it can be distributed outside of OST. For example, after multiple attempts, it took more than 2 months for the ILCC Director to obtain an appraisal inventory database from the OAS Director. Although the OAS Director was willing to provide the database, he was unable to do so due to a bottleneck resulting from this policy. Specifically, the existing database was not provided to ILCC because the Acting Special Trustee incorrectly believed a memorandum issued by the Deputy Secretary, regarding valuations, precluded them from sharing all valuation information. The Department has an opportunity for OST and BIA to set aside such obstacles and work together more closely.

Due to delays, lack of control over personnel, and inefficiencies identified above, BIA and OST have expressed a desire to reorganize other functions, such as Title and Appraisal, under the ILCC. For example, a proposed policy change at BIA would allow the Program to automatically apply title without involving the Division of Land Titles and Records. A key element of internal controls, however, is separation of duties, whereby no one individual or office has the ability to authorize, process, and review an entire transaction. We encourage each Departmental office to recognize the expertise and the importance of the work done by the other offices. Good communication should help to eliminate redundancy and reduce delays. More importantly, the checks and balances provided by a separation of duties help to maintain integrity and ensure public confidence.

Resources

The potential for a significant increase in workload requires the Department to look at resource allocation. If resource allocation remains unchanged, successful implementation of consolidation efforts may be impeded.

In terms of staffing, ILCC is ready to address the potential increase in workload. Due to an existing contract with the Chickasaw Nation Industries, ILCC has the option to quickly address staffing needs through the use of contract employees. Other Departmental offices involved in Indian land consolidation activities, however, do not have this same capacity. For example, both OME and OAS report that they are understaffed. In some cases, this understaffing has meant that offices are unable to keep up with current workload demands. While we did not conduct analysis to confirm that current staffing levels are inadequate, if current workflow experiences delays, this will only be exacerbated should the settlement be approved.

The potential for increasing workloads will also require a robust information technology infrastructure. For example, the Trust Accounting and Asset Management System (TAAMS) is the system of record for land title and is used to process land acquisitions. Individuals expressed concern that reports from TAAMS sometimes take an extended period of time to run, particularly for land consolidation activities where a number of fractionated interests are often on a single deed.

Recommendations

On December 8, 2010, the President signed into law the Claims Resolution Act of 2010 which approved the *Cobell* settlement. Final approval by the court, however, may not occur until mid-2011. In its December 3, 2010 response to our draft report the Department stated that it has not thought it appropriate to be implementing a major new effort without final approval by the court, but has charged a small group to begin looking at potential ways to administer the program. While we acknowledged the Department's desire to not appear presumptuous of funds yet to be appropriated, this does not preclude the Department from conducting coordinated planning efforts for a possible settlement. Furthermore, whether BIA's existing Indian Land Consolidation Program or a new expanded program is used to implement the *Cobell* settlement, we recommend that the Department:

1. Ensure that the Department's Interim *Cobell* Team facilitates and coordinates the efforts of the many offices that will be involved in implementing the settlement. This team should gain an understanding of the needs of the various offices (e.g., staffing, technology, etc.) and develop a strategy that is communicated to all involved.

Department Response: Now that the Cobell settlement has been Congressionally approved, we agree that it will be important to coordinate the efforts of the various offices involved and to communicate strategies.

OIG Reply: We request that the Department provide a plan for implementing this recommendation, including target dates and responsible officials.

2. Provide affected offices within the Department and OMB an opportunity for input on BIA's strategic plan for the Indian Land Consolidation Program.

Department Response: We agree that affected offices within the Department and OMB should have input on this matter. However, we aim to treat the Cobell implementation effort as a unique project that will require a new plan, as opposed to a settlement that can simply be implemented using preexisting procedures to resolve land fractionation. For example, the draft report states that "The largest appropriation the [Indian Land Consolidation Program] received in a single year was about \$35 million in fiscal year (FY) 2005." In contrast, a fund of \$1.9 billion will now be available for land consolidation under the special appropriation associated with the Cobell settlement. We are not assuming that current structures can or should be used to implement this special, one-time, enormous effort, particularly since the settlement anticipates that the program will be scaled up relatively quickly, with the land consolidation program hopefully proceeding in the early years, in conjunction with other payouts under the settlement.

OIG Reply: Although the Department agrees that affected offices should be provided an opportunity for input, the Department likewise acknowledges that the *Cobell* implementation effort will require a new plan as opposed to using preexisting procedures. Upon development of a strategic plan, we request that the Department provide documentation that affected offices and OMB have been given opportunities for input.

3. Provide Indian Tribes and Tribal organizations, such as the Intertribal Monitoring Association on Indian Trust, an opportunity to become more involved in the planning and implementation of land acquisition strategies.

Department Response: Now that the Cobell settlement has been Congressionally approved, we agree with you that tribal engagement on implementation is crucial. The Department and Native American Plaintiffs in the Cobell lawsuit worked together during the settlement agreement phase and reached a shared commitment. The Department intends to enter into government-to-government consultations with Tribes as it develops its approach for implementing the Cobell settlement.

OIG Reply: We request that the Department provide a plan for implementing this recommendation, including target dates and responsible officials.

4. Develop a communication plan to improve communication and more efficient sharing of information between BIA and OST.

Department Response: We agree that a plan for improved and more efficient

information sharing will be needed, particularly between the BIA and the OST offices, as well as other offices that will be involved in the Cobell settlement implementation process.

OIG Reply: We request that the Department provide a plan for implementing this recommendation, including target dates and responsible officials.

5. Direct BIA to review the proposed policy allowing ILCC to automatically apply title to ensure that quality controls have not been compromised, given the risks associated with maintaining accurate title.

Department Response: We agree that the BIA should review its proposed policy of restructuring the organization so that the title falls under the ILCC. However, we assume that virtually all policies and approaches developed under the prior, very limited land consolidation program need to be revisited in connection with the greatly scaled up, one-time program that needs to be developed in order to implement the Cobell settlement.

OIG Reply: Although the Department agrees that BIA should review its proposed policy and assumes that all related policies and approaches as they relate to *Cobell* implementation be revisited, we request that the Department provide documentation on the nature and extent of policy reviews.

6. Direct BIA to monitor the expected increase in workload and number of TAAMS users and work with the TAAMS vendor to ensure any technical issues are addressed.

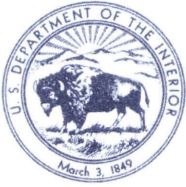
Department Response: We agree, and it is our understanding that the BIA is already working to address this issue. It should be noted, however, that we are considering developing a special structure to implement the Cobell land consolidation program.

OIG Reply: The Department agrees with the recommendation and states that BIA is already working to address this issue. The Department also states that it is considering developing a special structure to implement the *Cobell* land consolidation program. In either case, we request that the Department provide documentation supporting how these technical issues will be resolved, including target dates and responsible officials.

Appendix 1 – Offices Visited and Their Roles

Bureau of Indian Affairs
ILCC establishes policies and provides technical assistance and oversight of the Indian Land Consolidation Program (Program). Land acquisitions are processed by the Program's two Central Acquisition Centers. The Program's mission is to acquire as many fractionated interests as economically feasible and to consolidate these land interests into Tribal ownership to enable better Tribal utilization and management and promote and enhance Tribal self-determination, economic, social, and cultural development needs while reducing Government administrative costs.
Land Titles and Records Offices (LTRO) are the official offices-of-record for all documents affecting title to Indian lands and for the determination, maintenance, and certified reporting of land title ownership.
Division of Probate offices gather information regarding decedents' family and property and prepare it for adjudication by OHA. After OHA issues a probate order, the Division works with other trust offices, such as OST and LTRO, to distribute the assets.
Office of the Special Trustee for American Indians
OAS conducts appraisals, appraisal reviews, and appraisal consulting of real property interests in support of the Department's Indian trust asset management responsibilities.
U.S. Department of the Interior
The Office of the Solicitor, Division of Indian Affairs provides legal advice to BIA concerning the administration of Indian service programs.
OHA handles the probating of Indian trust estates, ensuring that individual Indian interests in allotted lands, their proceeds, and other trust assets are conveyed to the decedents' rightful heirs and beneficiaries.
OME produces mineral valuations, which are needed to determine the minerals contribution to the fair market value of lands, for a number of Federal clients including OHA, ILCC, and OAS.
Other Entities
OMB performs budget development and execution, oversight of agency performance, and coordination and review of significant Federal regulations by executive agencies to reflect Presidential priorities.
ITMA is a national consortium of 66 Tribes that was formed in 1990 to actively monitor the trust reform activities of the Federal Government. In FY 2008, OST gave ITMA a grant to conduct an outreach program to dialogue with Indian Country and solicit recommendations on ways to address a wide range of issues related to fractionated ownership of Indian land. ITMA submitted a report of its findings to BIA in January 2009.


Appendix 2 – Department Response to the Draft Report



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

December 3, 2010

To: Mary L. Kendall
Acting Inspector General

From: David J. Hayes 
Deputy Secretary

Subject: Preliminary Comments on the Draft Evaluation Report: Coordination of
Efforts to Address Indian Land Fractionation (WR-EV-BIA-0002-2010)

Thank you for the opportunity to provide comments on your draft report, "Coordination of Efforts to Address Indian Land Fractionation." Your report is well timed. As you know, Congress completed action just this week on the *Claims Resolution Act of 2010*, which authorized the settlement agreement of the Cobell v. Salazar class action lawsuit.

One of the primary thrusts of your report is a recommendation for improved internal and external communication regarding the land consolidation program's strategic planning process. We agree that good communication is very important, but it is unclear in your report whether some of the communications-related comments are directed at the current, very modest Indian land consolidation program that is operated by BIA, or whether they are directed at the potential implementation of a vastly expanded program under the Cobell settlement. It appears that at least some of the concerns are related to the latter. In that regard, it is important to note that until the Cobell settlement passed Congress (and, indeed, until it is finally approved by the court – which is not likely to occur until mid-2011), our office has not thought it appropriate to begin implementing the major new effort that will need to accompany the expenditure of \$1.9 billion in a new, Cobell-based land consolidation program. Accordingly, while we charged a small group to begin to scope out how such a huge expansion of the program might be administered, we have felt it important to not be presumptuous and therefore to not put in place new communications protocols or to otherwise solicit input more broadly on what, until this week, remained very much an unauthorized and unapproved prospective program. We would appreciate your report's recognition of the unique context of its review of the land consolidation program in that regard.

We are in agreement with much of your report, which is organized around six recommendations. The following comments will address each recommendation:

- I. Ensure that the Department's Interim *Cobell* Team facilitates and coordinates the efforts of the many offices that will be involved in implementing the settlement. This team should gain an understanding of the needs of the various offices (e.g., staffing, technology, etc.) and develop a strategy that is communicated to all involved.**

Response: Concur. Now that the Cobell settlement has been Congressionally approved, we agree that it will be important to coordinate the efforts of the various offices involved and to communicate strategies.

II. Provide affected offices within the Department and OMB an opportunity for input on BIA's strategic plan for the Indian Land Consolidation Program.

Response: Partially Concur. We agree that affected offices within the Department and OMB should have input on this matter. However, we aim to treat the Cobell implementation effort as a unique project that will require a new plan, as opposed to a settlement that can simply be implemented using preexisting procedures to resolve land fractionation. For example, the draft report states that "The largest appropriation the [Indian Land Consolidation Program] received in a single year was about \$35 million in fiscal year (FY) 2005." In contrast, a fund of \$1.9 billion will now be available for land consolidation under the special appropriation associated with the Cobell settlement. We are not assuming that current structures can or should be used to implement this special, one-time, enormous effort, particularly since the settlement anticipates that the program will be scaled up relatively quickly, with the land consolidation program hopefully proceeding in the early years, in conjunction with other payouts under the settlement.

III. Provide Indian Tribes and Tribal organizations, such as the Intertribal Monitoring Association on Indian Trust, an opportunity to become more involved in the planning and implementation of land acquisition strategies.

Response: Concur. Now that the Cobell settlement has been Congressionally approved, we agree with you that tribal engagement on implementation is crucial. The Department and Native American Plaintiffs in the Cobell lawsuit worked together during the settlement agreement phase and reached a shared commitment. The Department intends to enter into government-to-government consultations with Tribes as it develops its approach for implementing the Cobell settlement.

IV. Develop a communication plan to improve communication and more efficient sharing of information between BIA and OST.

Response: Concur. We agree that a plan for improved and more efficient information sharing will be needed, particularly between the BIA and the OST offices, as well as other offices that will be involved in the Cobell settlement implementation process.

V. Direct BIA to review the proposed policy allowing ILCC to automatically apply title to ensure that quality controls have not been compromised, given the risks associated with maintaining accurate title.

Response: Partially Concur. We agree that the BIA should review its proposed policy of restructuring the organization so that the title falls under the ILCC. However, we assume that virtually all policies and approaches developed under the prior, very limited land consolidation

program need to be revisited in connection with the greatly scaled up, one-time program that needs to be developed in order to implement the Cobell settlement.

VI. Direct BIA to monitor the expected increase in workload and number of TAAMS users and work with the TAAMS vendor to ensure any technical issues are addressed.

Response: Concur. We agree, and it is our understanding that the BIA is already working to address this issue. It should be noted, however, that we are considering developing a special structure to implement the Cobell land consolidation program.

Appendix 3 – Status of Report Recommendations

Recommendation	Status	Action Required
1, 3, 4	Management concurs; Additional information requested	Provide a plan for completing the action, including target dates and responsible officials.
2	Management partially concurs; Additional information requested	Provide documentation that affected offices and OMB have been given opportunities for input.
5	Management partially concurs; Additional information requested	Provide documentation on the nature and extent of policy reviews.
6	Management concurs; Additional information requested	Provide documentation supporting how technical issues will be resolved, including target dates and responsible officials.

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