



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

INDIAN LAND CONSOLIDATION: TRIBAL PARTICIPATION IN PROGRAM IMPLEMENTATION



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NOV 28 2011

Memorandum

To: Meghan Conklin
Associate Deputy Secretary

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Subject: Advisory – Indian Land Consolidation: Tribal Participation in Program
Implementation
Report No. WR-EV-BIA-0014-2011

This advisory, regarding the U.S. Department of the Interior's (Department) implementation of the land consolidation portion of the *Cobell v Salazar* settlement, is part of our ongoing effort to monitor and evaluate the funding appropriated to the Department in the settlement. Although Congress approved *Cobell* and it was signed into law, it is not final until entry by the Court of a Final Order and Judgment and resolution of any appeals from that Final Order and Judgment. During this time, the Department is consulting with tribes regarding Indian land consolidation strategies. As a result, these advisories serve to provide information to the Department in advance of implementation efforts.

Our objective was to review the challenges and efficiencies presented by federal and/or tribal government involvement in the implementation of the land consolidation provisions in *Cobell*. We interviewed officials from the Bureau of Indian Affairs (BIA) Indian Land Consolidation Office. We also interviewed leaders from the following tribal governments: Blackfeet, Confederated Tribes of Salish and Kootenai, Lummi, Navajo, and Quinault. Our work is in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

The *Cobell* settlement provides for a \$1.9 billion Indian Trust Land Consolidation Fund (Fund). The settlement funds are to be distributed through the Land Consolidation Program (Program) authorized under the Indian Land Consolidation Act of 1983 (Act), as amended. The settlement agreement requires that the Fund be used solely for acquiring fractional interests in trust or restricted lands, implementing the Program, and paying the costs related to the work of the Secretarial Commission on Trust Reform.¹ No more than 15 percent of the Fund shall be used for implementing the Program and paying costs related to the Secretarial Commission. To carry out some or all of the Program, the Act authorizes the Secretary of the Interior to enter into agreements with the tribal governments that exercise jurisdiction over the lands involved. Such

¹ These costs include the costs of consultants to the Commission and audits recommended by the Commission.

agreements, however, are not subject to contracting or compacting provisions authorized in the Indian Self-Determination and Education Assistance Act of 1974.

Tribes have expressed their wish to operate the Program on their respective reservations, in part because of their desire for self-determination, the capacity of their existing tribal land consolidation programs, and the belief that the BIA should not be implementing the solution to a problem that it helped cause. We identified some access concerns for tribes using the information systems necessary for Program implementation. We also identified benefits to the tribes and BIA working together to implement the Program.

Information Systems: Access and Data Concerns

Tribes do not have Access to Necessary Information Systems

A critical requirement for processing land acquisitions is access to the Trust Asset and Accounting Management System (TAAMS). TAAMS is the Department's system of record for managing trust assets. TAAMS records trust data such as the landowner's interests, the land's legal description, and title. In fiscal year 2006, a TAAMS module for BIA's Indian Land Consolidation Program (TAAMS/LCP) was created. TAAMS/LCP was recently upgraded to provide additional automation such as generating bar codes with scanning capabilities for offer and deed packets. The Indian Land Consolidation Office's intent for these automation upgrades was to increase efficiencies and reduce opportunities for human error when processing land acquisitions. As a result, the existing Program processes nearly all land consolidation activities in TAAMS rather than manually processing them as in prior years.

No tribes have access to TAAMS/LCP and it is unclear how many tribes have some level of access to TAAMS. Tribes are able to request access to TAAMS through their BIA Agency Superintendent or Regional Director. Currently, three tribes have compacts or contracts to perform the TAAMS title function, which entails maintaining and tracking land title documents, including supporting revenue distribution, invoicing, acquisitions and all legal details relating to land transactions. BIA was unable to provide the total number of tribes that have some level of TAAMS access without conducting a data call at each region. Due to the short timeframe for these advisory reports, we did not request BIA to conduct the data call.

Prior to gaining access to TAAMS, an individual must first complete training to become familiar with the system. The cost of a group training class ranges from approximately \$15,000 to \$40,000 depending on the level of access the training covers.² BIA's national TAAMS program covers the cost of the class. Individuals cover the cost of their own travel. Additionally, persons must access TAAMS on Government-provided equipment using the Department's virtual private network. Usually, a BIA program covers the cost of this equipment, which can include computers, printers, and scanners.

² BIA contracts with CGI, an information technology services firm, for training classes of up to 15 persons. The cost for the entire class is \$4,650 per day to train in Dallas and \$4,950 per day to train at any other location such as a BIA site. Write/encode access requires 5 days training; read/inquiry access requires 3 days training. Access to the TAAMS/LCP module requires an additional 3 days training.

Privacy and Data Integrity Concerns

With an increase in TAAMS users, comes an increase in privacy and data integrity concerns. The system is updated nightly with personally identifiable information held by Office of the Special Trustee for American Indians trust financial system. The potential exists for TAAMS users to access personally identifiable information (i.e., an individual's account balance, how funds are distributed, and to whom) for inappropriate reasons, such as satisfying their own curiosity. TAAMS users could also negatively impact data integrity by recording incorrect data.

BIA, however, does have several checks in place to reduce these risks. First, there are a number of security-related steps for users to gain access to TAAMS. Before an individual gains access to TAAMS, they must pass a minimum background investigation, finger print check, and credit check. In addition, the individual must sign the Rules of Behavior for use of a Government information technology system, and complete annual security awareness training.³ The Rules of Behavior are intended to make TAAMS users accountable for their use of the system's information. In addition, BIA gives tribal users encode/write authority for only the data that is within their jurisdiction.

Second, the Indian Land Consolidation Office identified its internal Land Consolidation Tracking System (LCTS) as a mechanism to address concerns with data integrity. LCTS acts as a quality assurance check outside of TAAMS. It uses a checklist to identify interest-owner sale information such as tribal jurisdiction, tract number, and percentage of ownership. LCTS is updated throughout the TAAMS acquisition process. Frequently updating the LCTS verifies that the interest-owner, the land's description, and the valuation in TAAMS match. To ensure data integrity, tribes need access to both TAAMS and LCTS to process land acquisitions.

Efficiencies: Benefits Gained by BIA/Tribal Implementation

Administrative and Technological Benefits Provided by BIA Involvement

One of the Department's stated goals is to purchase all of the interests from a willing seller to close out an Individual Indian Money account and potentially eliminate a future probate. BIA may purchase all of the interests from a seller, regardless of which Indian reservations the interests are located in, as long as current appraised values are available. This benefits landowners with low-value landholdings across multiple reservations who may otherwise be reluctant to participate because the dollar value offered does not justify their time to complete the sale. Purchases made by tribes, however, would likely be limited to those interests within their reservation due to both tribal preference and potentially limited TAAMS access. It would be more efficient for BIA to process transactions that involve multiple reservations.

³ After completing Federal Information Systems Security Awareness, a person will be able to define personally identifiable information, describe and implement best practices for privacy protection, and avoid security breaches to protect the Agency's assets more effectively.

In an example provided by the Indian Land Consolidation Office, analysis in the Great Plains Region showed that 44 percent of enrollees own interests in more than one reservation. If each Great Plains tribe had its own acquisition office, it would require more than one transaction to purchase these interests. BIA, however, could purchase all of the interests in a single transaction. If a tribe identifies a seller who owns land on multiple reservations, they could request that BIA perform the acquisition, thereby alleviating this inefficiency of multiple purchases.

Further, tribes may be interested in purchasing interests only on tracts in which the majority of the landowners are willing to sell. With the overall goal of decreasing fractionation and the time limits on *Cobell* funding, however, purchase of small fractions from sellers as they become available is important, regardless of whether the purchase will make the tribe the majority landowner. BIA's involvement would help ensure that small fractions are purchased, as the Program has made purchasing highly fractionated interests a priority.

Outreach and Incentive Benefits Provided by Tribal Involvement

Tribes are in the best position to develop acquisition plans for their reservations, provide services and outreach to their members, and identify willing sellers. Tribal members often go to tribal offices when they have questions about BIA programs or land sale opportunities. In addition, owners with fractionated interests may be more likely to sell their interests to a tribal program than to a BIA program due to longstanding mistrust of the Federal Government.

Several tribes have demonstrated their capacity to run acquisition programs by establishing their own land consolidation offices. For example, the Confederated Salish & Kootenai Tribes (CSKT) established their own land consolidation program and have worked closely with the Program since 2004 to process land acquisitions on their reservation. Further, several tribes have contracted or compacted the appraisal and realty functions from OST and BIA. As discussed earlier, a few tribes have contracted or compacted the land title function.

Tribal involvement may also help to solve the challenge of encouraging landowners to sell their fractionated interests. Specifically, the value of many of the fractionated interests is so small it may not be worth the landowner's time to complete a transaction. Members of several tribes, including CSKT, Northern Arapahoe, and Quinault, have proposed the idea of an incentive fee to increase the number of sellers. Although the tribes are able to offer an incentive fee, the Federal Government is required to pay fair market value for fractionated interests. Tribes can offer such an incentive as long as it comes out of tribal funds and not the *Cobell* Fund.

Conclusion

The considerations in this and our other advisory reports, as well as the Secretary's Trust Principles should guide the Department as it develops a plan for implementing *Cobell's* Indian land consolidation program.⁴ This includes the following:

⁴ Secretarial Order 3215, April 2000

- Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion.
- Assure that any management of Indian trust assets promotes the interest of the beneficial owner.
- Promote tribal control and self-determination over tribal trust land and resources.
- Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of beneficial owners.
- Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes.

Information contained in this advisory will be included in our semiannual report to Congress. Please contact me at 202-208-5745 if you have any questions.

cc: Deputy Secretary, U.S. Department of the Interior
 Assistant Secretary – Indian Affairs
 Director, Bureau of Indian Affairs
 Principal Deputy Special Trustee, Office of the Special Trustee for American Indians
 Audit Liaison, Office of the Secretary
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