



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 19 2014

The Hon. Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

Enclosed are responses prepared by the Department to the questions for the record submitted following the July 15, 2014, hearing concerning Preparedness for the 2014 Fire Season.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

Department of the Interior
Responses to Questions for the Record
From the Hearing before the
Senate Committee on Energy and Natural Resources
Concerning
Preparedness for the 2014 Fire Season
July 15, 2014

Questions from Sen. Manchin:

Question 1: What do you think about S.2593/does your agency have a position on S.2593?

Response: The Administration has not taken a position on S. 2593, "The FLAME Act Amendments Act of 2014."

Question 2: What do you think would be the impacts on your agency if S.2593 were enacted into law?

Response: The Administration has not taken a position on the bill and the analysis of impacts has not been completed.

Question 3: What do you see as the advantages and disadvantages of S.1875 as compared to relevant sections in S.2593?

Response: As stated above, the Administration has not taken a position on the bill; however as shared in my testimony, some of the advantages of S.1875 and the President's budget are:

- Establishment of a new framework for funding fire suppression operations in the Department of the Interior and the U.S. Forest Service that will provide stable funding for fire suppression, while minimizing the adverse impacts of fire transfers on the budgets of other fire and non-fire programs. Such a framework allows for a balanced suppression and pro-active fuels management and restoration program, with flexibility to accommodate peak fire seasons but not at the cost of other Interior missions or by adding to the deficit; and
- The cap adjustment does not increase overall discretionary spending, as it would reduce the authority ceiling for the existing disaster relief cap adjustment by the amount required for fire suppression requirements.

Though we always assure adequate funds for firefighting and timely availability, this approach will be more transparent and will prevent the need to disrupt other fire activities and non-fire programs. Under this approach, we will not have to divert funds from important programs to pay for fire costs.

Question 4: *Do you have any comments on the statement (in S 2593):*

"... existing budget mechanisms for estimating the costs of wildfire suppression are not keeping pace with the actual costs for wildfire suppression due in part to improper budget estimation methodology."

Response: Researchers from USDA Forest Service Research and Development have been providing suppression obligation forecasts for nearly 20 years. Standard regression techniques and accepted statistical methodologies are used. The researchers select variables which include previous research, previous forecasts, and new data series.

The FY 2015 President's Budget proposes using the FLAME Outyear Forecast to estimate wildland fire suppression funding needs. The methodology used in the FLAME Outyear Forecast is the best projection available. These forecasts are completed using lagged values of data which is a common formulation in economic forecasting and identifies a consistent signal between current and lagged expenditures. Explicit forecasts of drought, climate and weather variables are not available at more than six to nine months ahead, so forecasts are difficult unless lagged values are used.

The ten-year average of suppression obligations is a reasonably good tool for estimating a normal year. However, we are increasingly experiencing years of abnormally high fire activity, which challenge our ability to budget for wildfire suppression costs. The President's Budget seeks to address this challenge by budgeting for wildfire suppression in a manner similar to how the Federal Government budgets for other natural disasters which are also difficult to predict. The President's Budget amends the Balanced Budget and Emergency Deficit Control Act to add an adjustment to the discretionary spending limits for wildfire suppression operations. The cap adjustment is intended to give flexibility to respond to severe, complex, and threatening fire or a severe fire season that is not captured in the historical averages. This new approach for budgeting for wildfire suppression costs will eliminate the need to transfer funds from other fire and non-fire programs and as well as the adverse impact from deferred investment in those programs.

Question 5: *In your opinion is there a way to improve upon using the 10 year historical fire suppression average as a methodology and, if yes, what might that be? Have you worked on beta- models of statistical regression models that may take the place of the 10 year average? If yes, has this shown any promise to be used – even in combination – with historical rates of expenditures to estimate out-year budget needs for fire suppression?*

Response: Building on the answer provided in question #4, the FY 2015 President's Budget proposes using the FLAME Outyear Forecast to calculate the amount anticipated for wildland fire suppression activities. The outyear forecast is prepared annually by researchers from the USDA Forest Service Research and Development. The researchers believe this methodology is the best projection available. These forecasts are completed using lagged values of data which is a common formulation in economic forecasting and identifies a consistent signal between current and lagged expenditures. Explicit forecasts of drought, climate and weather variables are not available at more than six to nine months ahead, so forecasts are difficult unless lagged values are used. These methodologies are reasonable solutions for these forecasts and use standard

modeling accepted for these kinds of forecasts.

The ten-year average is a reasonably good method of estimating suppression cost in an average year, and a stable estimate for budget formulation in outyears until we can incorporate factors such as drought, climate and weather into forecasts. The Administration's proposal, and S. 1875, propose a new budget framework, where a portion of the funding needed for suppression response is funded within the discretionary spending limits, and a portion is funded through the proposed amendment to the Balanced Budget and Emergency Deficit Control Act of 1985. The proposal is designed to provide stable funding for wildfire suppression, even with uncertainty in the severity and costs of fire seasons, while minimizing the adverse impact of fire transfers on the budgets of other fire and non-fire programs. The cap adjustment will be used for the most severe fire activity which constitutes approximately one percent of all fires and results in 30 percent of the overall costs.

The use of the ten-year average of fire suppression costs for budget formulation, updated with forecast models of cost predictions, and a budget framework that provides certainty of funding while limiting impact to other programs, is a reasonable and responsible approach to addressing the catastrophic and unpredictable nature of wildland fires.

***Question 6:** Under one scenario in S.2593 it may be possible that approximately \$1 billion more would be used for fire suppression costs and forest management activities, as compared to either the administration proposal or S. 1875. Could you please give us an overall idea what the possible effects of this might be?*

Response: The Administration has not taken a position on the bill nor completed an analysis of the bill, however, as provided in my statement, the Administration's proposal and S. 1875 propose a new budget framework, where a portion of the funding needed for suppression response is funded within the discretionary spending limits, and a portion is funded through the proposed amendment to the Balance Budget and Emergency Deficit Control Act of 1985. The proposal is designed to provide stable funding for wildfire suppression, while minimizing the adverse impact of fire transfers on the budgets of other fire and non-fire programs. The cap adjustment will be used for the most severe fire activity which constitutes approximately one percent of all fires and results in 30 percent of the overall costs. In FY 2015 for the DOI, the cap level requested is \$240.4 million.

Questions from Sen. Heller:

News reports earlier this month that discussed that some of the highest risks near power lines and critical infrastructure put some of our Northern Nevada communities and the neighboring communities in California at-risk for rolling blackouts.

Question 1: *What are your agencies doing to proactively mitigate the risk to critical infrastructure?*

Response: In our allocation decisions, critical infrastructure, including major power lines, has been and will continue to be a key value we use to determine the scope of the fuels problem and aids in determining where priority work should be accomplished. Because critical infrastructure informs allocation decisions, DOI agencies are expected to prioritize these values in their program of work.

Question 2: *Can the agency mobilize fuel reduction quickly and proactively to treat high-risk areas where a fire could threaten rural communities or critical infrastructure, like power lines or our water delivery infrastructure?*

Response: The fuels program does not have an unlimited capacity to treat the vast amount of expanding wildland-urban interface, critical infrastructure, and other high-risk areas across federal and tribal lands, but fuels program funds are allocated to best protect high valued assets in highest risk areas.

It should also be noted that scientific studies such as one recently published by the Ecological Restoration Institute (ERI) suggest that focusing fuels treatments on the wildland-urban interface and critical infrastructure alone will not resolve the occurrence of large catastrophic wildfires that threaten these key values. ERI's publication suggests that although hazardous fuels treatments near communities can reduce wildfire risks to home and people, backcountry fuels treatments are equally important to prevent the "mega" wildfires that most often start on federal lands and eventually burn onto state and private lands. The Department recognizes this as an issue and has, therefore, proactively proposed a new approach that complements the existing fuels management program.

The proposed new Resilient Landscapes Program in the 2015 DOI Wildland Fire Management budget is purposed toward making significant short- and long-term investments that result in fire resilient landscapes by focusing funding for Resilient Landscape Collaboratives. These Collaboratives invest and leverage Wildland Fire Management funding with other natural resource funding in order to prepare for, respond to, and recover from wildfire by expanding our fire resilient landscapes and better addressing the growing impact of wildfire effects on communities, critical infrastructure and federal lands.

As you know, the U.S. Fish and Wildlife Agency is under a court order to make a listing determination on the Greater Sage-Grouse under the ESA by Sept. 2015. The responsibility of the health of Nevada's sagebrush ecosystem and rangeland-the critical habitat of the

Greater sage-grouse falls almost entirely on the federal land managers that control over 85% of the land in Nevada. While I understand the BLM and the U.S. Forest Service are in the process of making Resource Management Plan amendments to address threats to habitat, such as wildfire, I fear the further restriction of multiple-use of public lands instead of successfully dealing with wildfire, invasive species, predators, and other threats will not be sufficient to prevent a threatened or endangered listing of the sage-grouse under the Endangered Species Act.

Question 3: *How can we spur faster fuel reduction on lands identified as priority habitat for the sage-grouse? Not enough is being done to truly address wildfire threats to habitat and a listing of the sage-grouse will devastate the rural communities in my state.*

Response: We share your concerns about the potential listing of the greater sage grouse. Invasive grasses, encroachment of pinion-juniper, drought, wildfires, and BLM's management decisions are likely to influence the decision by the Fish and Wildlife Service. The Department is working with other federal agencies, local and state governments, tribes, partners and stakeholders to take a collaborative approach to reduce wildfire risks in greater sage grouse habitat.

The greater sage grouse is considered a natural resource value we use to determine the scope of the fuels problem and aids in determining where priority work should be accomplished. Because natural resource values inform allocation decisions, DOI agencies are expected to prioritize these values in their program of work. The funding allocated for treatment of these 240,000 acres represents over 61% of the BLM's fuels allocation for this fiscal year.

Funding the Resilient Landscapes program as a new approach to complement the on-going work in the fuels program is essential to the Department's success in protecting critical habitat for the greater sage grouse. The Resilient Landscapes Program is purposed towards making significant short- and long-term investments that result in fire resilient landscapes by focusing funding for Resilient Landscape Collaboratives. These Resilient Landscape Collaboratives are likely to include other federal, state, NGO, and stakeholder partnerships. Resilient Landscape Collaboratives invest and leverage Wildland Fire Management funding with other natural resource funding in order to prepare for, respond to, and recover from wildfire. By expanding our fire resilient landscapes and better addressing the growing impact of wildfire effects on communities, we will lessen the risk of wildfire to critical infrastructure and federal lands.

FROM SENATOR JEFF FLAKE

Question 1: In your testimony, you claim that the administration's wildfire budget proposal would "free up resources to invest in areas that will promote long-term forest health and reduce fire risk." Yet, at least one senior member of the Senate Appropriations Committee has indicated that the freeing up these resources will allow the Committee to use those extra resources to fund "the Land and Water Conservation Fund, resource conservation and energy permitting." What guarantees are there in the administration's proposal that the Appropriations Committee would direct the resources that are "freed up" by the proposal to address hazardous fuel reduction?

Response: The Administration cannot predict the decisions of the Appropriations Committee in its appropriations bill, but the President's Budget does direct much of the "freed up" suppression funding to programs that promote long-term forest health and reduce fire risk. By proposing to fund 70 percent, rather than 100 percent, of the 10-year suppression average within the discretionary budget caps, the President's Budget makes \$115.1 million available for other purposes and invests a good share of this in the broader Wildland Fire Management program. For example, a program increase of \$34.1 million in the Preparedness program would enhance Interior's readiness capabilities by strengthening BIA's wildfire program, funding contract support costs, and providing workforce development opportunities for firefighters, among other things. The President's Budget proposal also includes \$30 million for a new program, Resilient Landscapes, intended to assist in the implementation of the National Cohesive Strategy goals by improving the integrity and resilience of forests and rangeland by restoring and maintaining landscapes to specific conditions for fire resiliency. A \$2.0 million increase requested for the Burned Area Rehabilitation program would be invested in areas where recovery of fire-damaged lands is required. This includes areas where wildfire has impacted critical habitat throughout the western states such as the greater sage grouse habitat in the Great Basin.

Question 2: In your testimony, you state, "This base level funding ensures that the cap adjustment will only be used for the most severe fire activity which constitutes approximately one percent of all fires and 30 percent of the costs." Is it your understanding that this 30 percent cap adjustment would continue to apply, even if the administration's proposal allows it to reduce fire suppression costs through proactive hazardous fuels reduction work?

Response: Yes, the cap adjustment based on the FLAME Outyear Forecast would continue as outlined in the amendment to the Balanced Budget and Emergency Deficit Control Act of 1985. Use of the funds over time may not be required as proactive fuels management work is completed. However, the beneficial effect of this type of work is longer term and it would be premature to assume short term results or corresponding financial savings.

Question 3: Will the Department commit to working with Senators McCain, Barrasso,

and myself on resolving this devastating fire borrowing problem, more accurately funding wildfire suppression, and committing resources to proactive forest restoration?

Response: The Department is committed to working with the Congress to collaboratively address the issues associated with a resolution to adequately fund the high priority programs of wildland fire suppression and fuels management.

Question 4: *Will the Secretary of the Interior commit to appearing before the Senate Energy and Natural Resources Committee to discuss the Department's FY15 budget request before the beginning of the next fiscal year?*

Response: The Secretary and the Department are committed to working with the Committee to discuss all appropriate issues.



United States Department of the Interior

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Washington, DC 20240

NOV 20 2014

The Hon. Doug Lamborn
Chairman
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the July 15, 2014, hearing on "*Implementation and Administration of the 2013 Helium Stewardship Act.*"

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Rush Holt, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources

Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
Oversight Hearing

“Implementation and Administration of the 2013 Helium Stewardship Act.”

Tuesday, July 15, 2014

Questions from Chairman Doug Lamborn for Ms. Linda Lance, Deputy Director, Programs and Policy, Bureau of Land Management, U.S. Department of the Interior

- 1. In your testimony to the committee, you responded to the question of whether BLM would bar refiners from participating in federal crude helium sales and auctions if they are not reporting accurately their excess refining capacity or offering to toll federal crude helium volumes purchased by non-refiners at commercially reasonable rates by stating that BLM intends to “follow the law.” Later in the hearing, Mr. Spisak acknowledged that refiners currently have excess refining capacity.**
 - a. Can you explain what process is in place for BLM to “follow the law” and bar a refiner from participating in federal crude helium sales if they are not reporting accurately their excess refining capacity or offering to toll federal crude helium volumes purchased by non-refiners at commercially reasonable rates?**

Answer: The initial requirement to report excess refining capacity was transmitted to the refiners in the January 2, 2014, Phase A Invitation for Offers (IFO). That initial requirement to report was met by all refiners. However, absent a clear definition, the replies received by the BLM varied based on each refiner’s interpretation of what constituted excess refining capacity.

After the initial refiner response, the BLM developed a template with clear instructions on what is being requested from each refiner. Current reporting indicates a clear understanding of the requirement. Attachment 1 provides the reporting form and the cumulative data reported by the refiners, based upon the requirement to report for FY2015 prior to the Phase B Auction. The cumulative excess refining capacity for all refiners in FY 2015 is 786.5 million cubic feet of gas.

- b. As Mr. Flores stated at the committee hearing, there is no “transition period” for the tolling provision in the Act.**
 - i. Can you inform the Committee how many refiners have accurately reported their excess refining capacity or tolled federal crude helium volumes purchased by non-refiners in the two Phase A sales at commercially reasonable rates?**

Answer: At the BLM’s direction, all four refiners reported their excess refining capacity. A single refiner entered into an agreement to toll 10 million cubic feet for a non-refiner at a specified rate.

- ii. **How many of the refiners who have not fulfilled either of these two statutory conditions are being barred from participating in the upcoming federal crude helium sales?**

Answer: Currently, all refiners have complied with the conditions of sale and none have been barred.

- iii. **How many of the refiners who have not fulfilled either of these two statutory conditions have received a notice from BLM that they must come into compliance before participating in the upcoming federal crude helium sales?**

Answer: All refiners complied with the terms and conditions of sale. No refiners have been barred or received notice that they would be barred.

2. **GAO testified that BLM officials informed them that “the [Helium Stewardship Act] intended to have the auctions replace the portion of the sales that were previously available to non-refiners.”**

- a. **Can you explain and provide appropriate citations as to where, in the text of the Act or in any documented legislative history underlying the Act, it is clear that “the [Helium Stewardship Act] intended to have the auctions replace the portion of the sales that were previously available to non-refiners.”?**

Answer: Section 6, Paragraph (b), Subparagraph (12) states “(12) SALE SCHEDULE AND FREQUENCY.—For fiscal year 2015 the Secretary shall conduct only one auction, which shall precede, and one sale, which shall take place no later than August 1, 2014, with full and final payment for the sale being made no later than September 26, 2014”.

Prior to the Helium Stewardship Act of 2013, the BLM issued an annual IFO for two distinct sales, 1) an allocated sale, and 2) a non-allocated sale, pursuant to the BLM’s interpretation of the Helium Privatization Act of 1996. Under this interpretation, the non-allocated sale provided access to the non-refiners. In contrast, the 2013 Act did not use the term allocated or non-allocated in reference to sales; rather, it directed the BLM to conduct one sale and one auction for FY 2015. Therefore the BLM interpreted the 2013 Act to mean the sale would provide access to refiners and the auction would provide access to any party who desires to purchase Federal helium. The BLM confirmed this interpretation in several verbal communications with Committee staff, who agreed the auction would take the place of the non-allocated sale.

- b. **Section 6(b)(1) of the Helium Stewardship Act requires BLM to sell this Phase B non-auction helium under terms that “maximize the total financial return to the taxpayer.”**

- i. **Does BLM believe that making 100 percent of the Phase B non-auction sale volumes (approximately 900 million square feet) exclusively available to**

three private companies will “maximize the total financial return to the taxpayer.”?

Answer: The Phase B non-auction sales volumes are sold at a predetermined market-based price that is weighted using the auction results as required by the Act.

Attachment 1

Submit Form To:

BUREAU OF LAND MANAGEMENT
AMARILLO FIELD OFFICE
ATTN: Assistant Field Manager for Operations
801 S. Fillmore, Suite 500
Amarillo, Texas 79101

CALCULATION OF EXCESS REFINING CAPACITY

FISCAL YEAR: 2015

	REFINER'S FORECAST
Operational Refining Capacity <i>(The total capacity available to refine crude helium to pure, including capacity that could reasonably put into operation for the forecasted fiscal year.)</i>	3.266 Bcf
Planned Demand <i>(The planned demand for helium refining for the forecasted fiscal year.)</i>	2.479 Bcf
Equals: Excess Refining Capacity <i>(The reported total refining capacity of the refiner, minus the volume of refined helium delivery commitments for a particular fiscal year.)</i>	786.5 MMcf

Attachment 3

Submit Form To:

BUREAU OF LAND MANAGEMENT
AMARILLO FIELD OFFICE
ATTN: Assistant Field Manager for Operations
801 S. Fillmore, Suite 500
Amarillo, Texas 79101

Refiners' Tolling Occurrence Report

FISCAL YEAR: _____: **Submit within 14 days of entering into a tolling agreement**

Volumes in million scf/yr

Company	Date Tolling Agreement Signed	Volume	Price (Per MCF)	Delivery Period

I certify that the information provided above accurately describes the recent tolling agreement with a non-refiner storage contract holders in the Federal Helium Program. I understand that this information will be treated as business sensitive by the BLM, but will be aggregated with other refiners' data for the BLM's purposes.

Company Name: _____ Title: _____

Telephone: _____ Printed Name of Authorized Agent: _____

Email: _____ Signature: _____ Date: _____



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 19 2014

The Hon. Doug Lamborn
Chairman
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the June 20, 2014, hearing concerning H.R. 1587 and H.R. 4293.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Rush Holt, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources

DRAFT RESPONSES

Questions from Ranking Member Holt:

- 1. Mr. Nedd, please describe the NEPA process that takes place for the siting of pipelines that take oil away from individual oil wells. During this process, what would be the additional review needed to co-locate a gas gathering pipeline alongside the oil pipeline? Does the BLM provide operators the option of doing concurrent NEPA reviews for oil and gas pipelines that could be co-located?**

Answer: The National Environmental Policy Act (NEPA) environmental review process for the siting of pipelines that take oil away from individual oil wells is most commonly accomplished through an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). An EA to concurrently review and authorize a gas gathering pipeline alongside an oil gathering pipeline would not typically take any additional time and is the BLM preferred approach. This option is commonly offered to the developer of a federal oil and gas lease. To streamline the permitting process and expedite the environmental review of an application for permit to drill (APD) and its associated infrastructure, the BLM encourages operators to submit both oil and gas pipeline proposals with their original APD. The BLM considers co-locating these pipelines in the same trench or along a road right-of-way a standard Best Management Practice (BMP) to minimize the foot print of oil and gas operations.

- 2. Mr. Nedd, please provide examples of the different methods by which operators or third parties may obtain authorization to place gas gathering pipelines across federal lands (i.e. rights-of-way, sundry notices, APDs, and any others that may exist), and the level of NEPA review required for each.**

Answer: The BLM authorizes oil and gas gathering pipelines depending on their location in relation to authorized oil and gas leases. If the gas gathering pipeline is on the same lease as the well to be drilled, then the pipeline is authorized as part of the decision on the APD. An APD is submitted to authorize facilities connected with on-lease oil and gas development. A Sundry Notice (SN) is typically submitted for pipelines that service a producing well, but may also be submitted for any other type of additional facility. Once a complete APD or SN is received by the BLM, the BLM will process the APD or SN to meet the requirements of the National Environmental Policy Act, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Tribal consultation, and other relevant authorities. When the requirements are met the BLM will make a decision to either authorize or deny a gas well and ancillary facilities, including a gas gathering line. The average number of days to process an APD has dropped from over 300 days in 2011 to less than 200 days in 2013.

For proposed oil or gas gathering pipelines crossing off the approved oil and gas lease, the project developer would submit a right-of-way (ROW) application. The timeframes for completion of environmental reviews and compliance with other required Federal laws varies based upon whether the project area has been previously analyzed, existence of relevant data, and site-specific issues or controversy. In many cases, smaller-scope projects may already be

**House Natural Resources Subcommittee
on Energy and Mineral Resources
June 20, 2014**

DRAFT RESPONSES

categorically excluded from further NEPA review if, for example, they would be located entirely within the boundaries of another compatibly developed existing right-of-way. In many cases smaller-scope projects are adequately analyzed in a previously completed EA. If a gas gathering pipeline needs to cross onto a second lease, then it would be authorized through a ROW as well. The BLM processes hundreds of pipeline ROW applications each year for oil and gas related activities. Most oil and gas related ROW applications are completed in less than three months.

- 3. Mr. Frost, does the National Park Service believe it had the authority to permit pipelines on its lands prior to 1973? Does it believe that this authority was removed by Congress with the amendments to the Mineral Leasing Act in 1973? In Mr. Santa's testimony, he stated that the Park Service believed that they had the authority until the late 80s, and that a legal opinion reversed that. Can you provide more information about how pipelines were sited in National Park units between 1973 and the late 1980s?**

Answer: Yes, the NPS believes that until 1973 it had the authority under the Mineral Leasing Act (MLA) to permit oil or gas pipelines across, through, or under lands administered by the NPS. When Congress amended the MLA in 1973, it expressly excluded NPS-administered lands from the act's provisions. Since 1973, we have been unaware of any general legal authority for the NPS to permit new pipelines in units of the National Park System. Some confusion may exist because under the MLA's so-called grandfather clause, 30 U.S.C. § 185(t), the NPS has the authority to ratify and confirm existing rights-of-way for oil or gas pipelines.

**House Natural Resources Subcommittee
on Energy and Mineral Resources
June 20, 2014**

DRAFT RESPONSES

Questions from Rep. Costa:

- 1. What are the tradeoffs for eliminating Congress from the natural gas gathering lines approval process?**

Answer: H.R. 4293, concerning gas gathering pipelines, could deprive the BLM of the information obtained from engaging in the vitally important public participation and environmental analysis process, which forms a crucial component of the BLM's multiple-use management of the public lands and the consideration and mitigation of impacts to adjacent resources and lands. These open, public processes facilitate the consideration of impacts to the affected environment and identify unknown or unforeseen issues, which is invaluable to sound public land management. Further, H.R. 4293 could deprive BLM of site-specific NEPA analysis needed for particular natural gas pipelines. The loss of active public participation and environmental analysis would reduce the BLM's ability to make informed decisions.

Your question is also relevant to HR 1587, the Energy Infrastructure Improvement Act, which would authorize the Secretary of the Interior to issue permits for rights-of-way or other necessary authorizations to facilitate natural gas, oil, and petroleum product pipelines and related facilities on eligible federal lands, including on lands managed by the National Park Service. The bill would reverse the longstanding prohibition on allowing such pipelines on NPS lands without the explicit authorization of Congress. As noted in our testimony, this exemption in the Mineral Leasing Act protects the integrity, resources, and values of the National Park System, and the authority in H.R. 1587 would undermine the purpose for which system units were created.

- 2. Doesn't the BLM already have this type of authority without involving Congress? How has involving Congress supported the ability for safety improvements?**

Answer: Yes. Some activities called for in H.R. 1587 are within the scope of existing Department authorities and consistent with our priorities and activities already underway.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

NOV 10 2014

The Honorable Don Young, Chairman
House Natural Resources Subcommittee on
Indian and Alaska Native Affairs
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs in response to questions received following the May 07, 2014, hearing before your Committee regarding H.R. 409, The Indian Trust Reform Act and H.R. 4350, the Northern Cheyenne Lands Act.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa
Ranking Member

Questions for Mike Black
Subcommittee on Indian and Alaska Native Affairs
House Natural Resources Committee
Regarding H.R. 409 and H.R. 4350
May 7, 2014

Chairman Young:

1. Do the provisions of Section 102 accurately state or reflect the status of current law regarding the proper discharge of the United States' fiduciary responsibility to Indians? If the answer is "no," please state which of the provisions of that section do not accurately reflect the status of current law.

Response: The language of Section 102 suggests that the common law fiduciary standards that govern private trustees also govern the United States, rather than the United States being governed by the terms of Congressionally-enacted statutes and regulations implementing those statutes. Such a standard would conflict with certain holdings of the U.S. Supreme Court.

In modern times, the Court has opined on the scope of the United States' trust responsibility. *See, e.g., United States v. Mitchell*, 445 U.S. 535 (1980); *United States v. Mitchell*, 463 U.S. 206 (1983); *United States v. Navajo Nation*, 537 U.S. 488 (2003); *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003); *United States v. Navajo Nation*, 556 U.S. 287 (2009) (*Navajo Nation II*). Generally speaking, in the context of cases seeking monetary damages, the Court has held that an Indian tribe must "identify a specific, applicable, trust-creating statute or regulation that the Government violated, ... [and absent that,] neither the Government's 'control' over [assets claimed by Indians] nor common-law trust principles matter." *Navajo Nation II*, 556 U.S. at 302. The Supreme Court has further held that, where appropriate, common law fiduciary standards can inform the conduct of carrying out trust duties, but are not the source of trust duties. *See United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313, 2325 (2011) (*citing White Mountain Apache*, 537 U.S. at 475-476). Thus, under current Supreme Court jurisprudence, common law fiduciary standards can be used to fill a gap left by Congress but are not the origin for establishing the United States' trust duty.

Section 102(3) also states that, "the fact that the United States simultaneously performs another task for another interest that Congress has obligated it by statute to do does not compromise or limit the United States enforceable fiduciary obligations to Indians." Under controlling Supreme Court case law, the United States must balance the Indian trust responsibility with other responsibilities mandated by Congress: "The Government does not 'compromise' its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has obligated it by statute to do." *Nevada v. United States*, 463 U.S. 110, 128 (1983).

Questions for Mike Black
Subcommittee on Indian and Alaska Native Affairs
House Natural Resources Committee
Regarding H.R. 409 and H.R. 4350
May 7, 2014

In sum, Section 102 could potentially be interpreted as altering certain holdings of the U.S. Supreme Court by providing that the United States is subject to common law fiduciary duties in all circumstances.

2. The Administration's testimony states that, in the Department's view, some of the provisions in Section 102 of the bill as introduced are "more a redefinition than a reaffirmation." If enacted, would Section 102, as written, change existing law? If the answer is "yes," what specific U.S. Supreme Court decisions and legal doctrines would be affected?

Response: Given the breadth of case law and varying fact patterns, it is difficult to specify which decisions would be affected if Section 102 was enacted. The previous response discusses the current state of the law and how Section 102 would potentially modify that law.

3. Would the enactment of Section 102 potentially affect the extent of liability of the United States in pending litigation? If so, please explain how the enactment of that section would affect the extent of that liability.

Response: It is possible that enactment of Section 102 would impact the extent of the United States' liability in pending litigation, depending on the claims of each case and the stage of the litigation. However, it is difficult to conclude with certainty how each case would be affected, and it would also be important to consider the procedural posture of any particular case.

4. Would the enactment of Section 102 potentially affect the extent of liability of the United States in future litigation? If so, please explain how the enactment of that section would affect the extent of that liability.

Response: Section 102 could potentially affect future liability, but it would be premature to make a blanket statement about potential future liability with no factual context. For instance, it is not clear how courts would interpret Section 102, and it is not certain that in all cases the Department would have increased liability when its actions are evaluated under an arguably different standard. In some cases, there may be increased liability and in other cases it may have no impact at all. Inclusion in the legislation of language clarifying that Congress meant only to reaffirm the existing general trust responsibility between the United States and Tribes could address this concern, but it still would be difficult to make predictions regarding future liability.

5. In its comments on Title II, the Administration's testimony discusses at length how the trust asset demonstration project will allow tribes to develop individual IT systems, that will, in turn, force the Department to "interface with what could be incompatible systems and incur additional administrative support costs that are likely to increase and gaps in the data for both the federal and tribal systems." What specific provisions of Title II would allow tribes to develop individual IT systems?

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Response: Sec. 204 of H. R. 409 states the following:

(3) **AUTHORITY OF INDIAN TRIBES TO DEVELOP SYSTEMS, PRACTICES, AND PROCEDURES.**— For purposes of preparing and carrying out a management plan under this section, an Indian tribe that has compacted or contracted activities or functions under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), for purposes of carrying out the activities or functions, *may develop and carry out trust asset management systems, practices, and procedures that differ from any such systems, practices, and procedures used by the Secretary* in managing the trust assets if the systems, practices, and procedures of the Indian tribe meet the requirements of the laws, standards, and responsibilities described in subsection (c). [emphasis added]

The trust asset management system used by the Department is the Trust Funds Accounting System (TFAS), which is an IT system. This language in section 204 would authorize tribes to develop and employ alternative systems, including IT systems, to manage their trust assets.

6. Much of the Administration's testimony is devoted to describing purported successes and accomplishments of the Office of the Special Trustee, specifically implementation of reforms related to the management of tribal trust funds. What major reforms, if any, remain for the Office of the Special Trustee to implement?

Response: One of the lessons learned by the Department during the course of implementing trust reform is the importance of continual reform. While many of the large systemic reforms were accomplished in the early years of OST's existence, the Department has continued to address residual issues. Most important, the Department is committed to maintaining best practices in Indian trust management, thus preventing lapses that might lead to a pre-Cobell environment. The level of care required of a fiduciary does not permit the Department to suffer a gradual build-up of trust management problems; it requires aggressive, constant monitoring and correction. As with the private industry, it is essential that there be a degree of separation or independence between the fiduciary (OST) and the service provider (BIA).

7. The Administration's testimony mentions how the Office of the Special Trustee has hired more than 50 fiduciary trust officers (FTOs). How many FTO positions exist? Please list the tribe and location where each FTO is deployed. For example, if OST has 55 FTO positions, for each of the 55 positions identify the tribe(s) to which the FTO is assigned and the physical location of the FTO's worksite.

Response: Currently there are approximately 49 FTOs serving throughout Indian country. This number fluctuates somewhat with personnel changes. The current FTO positions, and their locations, are:

PRIMARY Agency	Address	Tribe(s) Assigned	Additional Location(s)
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ANADARKO AGENCY	Anadarko Agency Hwy. 281 N. & Parker McKenzie Dr. Anadarko, OK 73005	Apache of Oklahoma; Caddo Nation; Comanche Nation; Delaware; Ft. Sill Apache; Kiowa; Wichita and Affiliated Tribes	
CONCHO FIELD OFFICE	Concho Field Office 1635 E. Hwy. 66 El Reno, OK 73036	Cheyenne- Arapaho Tribes of Oklahoma	
HORTON AGENCY	Horton Agency 908 First Ave. East Horton, KS 66439	Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe in Kansas; Prairie Band of Potawatomi; Sac and Fox of Missouri	
PAWNEE AGENCY	Pawnee Agency P.O. Box 440 850 Agency Road, Bldg. 71 Pawnee, OK 74058	Kaw; Otoe- Missouria; Pawnee; Ponea of Oklahoma; Tonkawa	
SOUTHERN PLAINS REGION	Southern Plains Region W. C. D. Office Complex 1 Mile North Hwy 281 Anadarko, OK 73005	Shawnee	Shawnee Field Office (1 mi North of Anadarko, OK, on Hwy 281)
CHEROKEE Field Office	Cherokee Field Office P.O.Box 440 (w/Zip 74465) 17675 S. Muskogee, Rm 112 Tahlequah, OK	Cherokee; Eastern Shawnee; Miami; Modoc; Ottawa; Peoria;	Wyandotte Agency

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	74464	Quapaw; Seneca- Cayuga; Wyandotte	Miami Agency Miami, OK E. Oklahoma Region Office 3100 W. Peak Blvd, Rm 250 Muskogee, OK
CHICKASAW AGENCY	Chickasaw Agency PO Box 156 Ada, Oklahoma 74821	Chickasaw; Choctaw	Talihina, OK, Field Office
OSAGE AGENCY	Osage Agency 813 Grandview Pawhuska, OK 74056	Osage; All Tribes in the BIA Eastern Region	EASTERN REGION Nashville, TN
TULSA	Tulsa Urban Office 1323 East 71st, Suite 101 Tulsa, OK 74136	Alabama- Quassarte; Kialegee; Muscogee (Creek); Thlopthlocco; Seminole	Okmulgee, OK, Agency Wewoka, OK, Agency
EASTERN NAVAJO AGENCY	Eastern Navajo Agency P.O. Box 2098222-OST Code Talker Str. Crownpoint, NM 87313	Navajo; Hopi	Shiprock, NM, Agency
NAVAJO REGION	Navajo Region 301 W. Hill, Room 164 Gallup, NM 87301	Navajo	Western Navajo Agency, Tuba City, AZ Chinle Agency, Chinle, AZ Fort Defiance Agency, Ft. Defiance, AZ

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SOUTHWEST REGION	Southwest Region Office 1001 Indian School NW, Suite 349 Albuquerque, NM 87104	All Pueblos except Taos and Zuni; Mescalero Apache; Ramah	Ramah, NM, Navajo Agency
			Southern Pueblos Agency Albuquerque, NM
			Laguna Agency, Laguna, NM
			Zuni Agency, Zuni, NM
SOUTHERN UTE AGENCY	Southern Ute Agency 383 Ute Road Ignacio, CO 81137	Southern Ute; Ute Mountain Ute; Jicarilla Apache; Taos Pueblo; Zuni Pueblo	Jicarilla Agency, Dulce, NM
			Mescalero Agency Northern Pueblos Agency
			Ute Mountain Ute Field Office Towac, CO
FORT BERTHOLD AGENCY	Fort Berthold Agency 202 West Main Street New Town, ND 58763	Three Affiliated	
GREAT PLAINS REGION	Great Plains Region 115 4th Avenue SE, 5th floor Aberdeen, SD 57401	N/A	
PINE RIDGE AGENCY	Pine Ridge Agency 100 Main Street, BIA Bldg. Pine Ridge, SD 57770	Ogalala Sioux	
CHEYENNE RIVER AGENCY	(PO Box 325) Main Street BIA Bldg 2001 Eagle Butte, SD 57625	Cheyenne River Sioux	

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ROSEBUD AGENCY	Rosebud Agency P. O. Box 228 Rosebud, SD 57555 1004 Omaha St., Mission, SD 57555	Rosebud Sioux	
SISSETON AGENCY	Sisseton Agency Veterans Memorial Drive/BIA Bldg. Agency Village, SD 57262	Sisseton Wahpeton Oyate; Flandreau Sioux; Mississippi Sioux	Lower Brule Agency Lower Brule, SD
STANDING ROCK AGENCY	Standing Rock Agency Bldg. 194 Proposal Ave. Ft. Yates, ND 58538	Standing Rock Sioux	
TURTLE MOUNTAIN AGENCY	Turtle Mountain Agency BIA Rd. 7, Bldg. 174 Belcourt, ND 58316	Turtle Mountain Band of Chippewa; Spirit Lake	Fort Totten Agency Ft. Totten, ND
WINNEBAGO AGENCY	Winnebago Agency Hwy. 75, RR 1 Winnebago, NE 68071	Omaha of Nebraska; Winnebago of Nebraska	
SANTEE SIOUX Field Office	Santee Sioux Field Office 425 Frazier AVE N Niobrara, NE 68760	Yankton Sioux; Ponca of Nebraska; Santee Sioux	Yankton Agency Wagner, SD Crow Creek Agency Ft. Thompson, SD
RAPID CITY	Rapid City Urban Office 801 Mt. Rushmore Rd., suite 200 Rapid City, SD 57201	Crow Creek Sioux; Lower Brule	
ALASKA REGIONAL OFFICE	Alaska Region 3601 C Street, suite 216 Anchorage, AK 99503-5947	All Tribes in the State of Alaska except Metlakatla	

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MINNESOTA AGENCY	Minnesota Agency 522 Minnesota Avenue NW room 304 Bemidji, MN 56601-3062	Minnesota Chippewa Tribe (White Earth, Leech Lake, Fond du Lac, Bois Forte, Mille Lacs and Grand Portage Bands); Red Lake Band of Chippewa Indians	Red Lake Agency Red Lake, MN
BLACKFEET AGENCY	Blackfeet Agency 531 S. E. Boundary Street Browning, MT 59417	Blackfeet	
CROW AGENCY	Crow Agency Main BIA Bldg. 2, Weaver Drive Crow Agency, MT 59022	Crow	
FORT BELKNAP AGENCY	Fort Belknap Agency 100 BIA Road Harlem, MT 59526	Fort Belknap Indian Community; Chippewa Cree	Rocky Boys Agency Box Elder, MT
FORT PECK AGENCY	Fort Peck Agency 500 Medicine Bear Road Poplar, MT 59255	Ft. Peck Assiniboine and Sioux	
NORTHERN CHEYENNE AGENCY	Northern Cheyenne Agency BIA Bldg., Hwy. 39 North Lame Deer, MT 59043	Northern Cheyenne	Rocky Mountain Region Billings, MT
WIND RIVER AGENCY	Wind River Agency 1st and Washakie Street Ft. Washakie, WY 82514	Northern Arapaho; Eastern Shoshone	

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PALM SPRINGS AGENCY	Palm Springs Agency 3700A Tachevah Drive Suite 202 Palm Springs, CA 92262	All Southern California Tribes	Southern California Riverside, CA
PACIFIC REGION	Pacific Region 2800 Cottage Way Federal Bldg., Room 2821 Sacramento, CA 95825	All Northern California Tribes	Central California Agency Sacramento, CA Northern California Agency, Redding, CA
COLVILLE AGENCY	Colville Agency Hwy. 155, 2 mi. South of Nespelem Nespelem, WA 99155	Colville; Spokane; Kalispel	Spokane Agency, Wellpinit, WA
FORT HALL AGENCY	Fort Hall Agency Corner of Agency & Bannock Avenue Fort Hall, ID 83203	Shoshone Bannock; Northwestern Band of Shoshone Nation; Confederated Salish and Kootenai	Flathead Agency Pablo, MT
NORTHERN IDAHO	Northern Idaho Agency 99 Agency Road, Phinney Bldg. Lapwai, ID 83540	Nez Perce; Coeur d' Alene; Kootenai Tribe of Idaho	
NORTHWEST REGIONAL OFFICE	Northwest Region 1201 NE Lloyd Blvd. Portland, OR 97232	Siletz; Grand Ronde; Klamath; Cow Creek Band of Umpqua; Coos, Lower Umpqua and Siuslaw; Coquille; Chehalis; Cowlitz; Hoh; Jamestown S'Klallam; Lower Elwha;	Siletz Agency Siletz, OR

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		Quileute; Shoalwater Bay; Skokomish; Squaxin Island; Makah;	
PUGET SOUND AGENCY	Puget Sound Agency 2707 Colby Avenue, suite 1115 Everett, WA 98201-3428	Lummi; Muckleshoot; Nisqually; Nooksack; Port Gamble S'Klallam; Puyallup; Samish; Sauk-Suiattle; Snoqualmie; Stillaguamish; Swinomish; Suquamish; Tulalip; Upper Skagit; Metlakatla	Metlakatla, AK, Agency
TAHOLAH FIELD OFFICE	Taholah Agency 1214 Aalis St. Bldg. C Taholah, WA 98587	Quinault	Makah Agency Neah Bay, WA Olympic Peninsula Agency Aberdeen, WA
UMATILLA AGENCY	Umatilla Agency 46807 B. St. Pendleton, OR 97801	Umatilla	Lapwai, ID
WARM SPRINGS AGENCY	Warm Springs Agency 1233 Veterans Street Warm Springs, OR 97761	Warm Springs; Burns Paiute	
YAKAMA AGENCY	Yakama Agency 401 Fort Road Toppenish, WA 98948	Yakama	

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COLORADO RIVER AGENCY	Colorado River Agency 12136 1st Avenue BIA Bldg. 4 Parker, AZ 85344	Colorado River; Chemehuevi; Fort Mojave; Havasupai; Hualapai; Tonto Apache; Yavapai-Apache; Yavapai-Prescott; Cocopah; Quechan	Fort Yuma Field Agency Ft. Yuma, AZ
			Truxton Canon Agency Valentine, AZ
			Hopi Agency, Keams Canyon, AZ
PAPAGO AGENCY (Tohono O'Odham)	Papago Agency P.O. Box 490 BIA Circle Drive, Bldg. 49 Sells, AZ 85634	Tohono O'odham; San Carlos Apache; White Mountain Apache	Fort Apache Agency Whiteriver, AZ
			San Carlos Agency (IIM Accounts) San Carlos, AZ
PIMA AGENCY	Pima Agency 104 N. Main Street P.O. Box 8 Sacaton, AZ 85247	Ak Chin Indian Community; Gila River Indian Community; Fort McDowell Yavapai; Pascua Yaqui; Salt River Pima-Maricopa Indian Community	Salt River Field Agency Scottsdale, AZ
			San Carlos Agency (Tribal Accounts) San Carlos, AZ

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UINTAH & OURAY AGENCY	Uintah & Ouray Agency P.O. Box 130 988 S. 7500 East Fort Duchesne, UT 84026	Ute; Skull Valley; Kaibab; Moapa; San Juan Southern Ute; Las Vegas Paiute	Southern Paiute Agency
WESTERN NEVADA AGENCY	Western Nevada Agency 705 N. Plaza St. Rm. 128 Carson City, NV 89701	All Nevada Tribes except Moapa and Las Vegas Paiute	Eastern Nevada Agency

8. Title III of the HR 409 would create a new Under Secretary that would to the maximum extent practicable, coordinate activities and policies of the BIA with activities and policies of the Bureau of Reclamation, the Bureau of Land Management, the Office of Natural Resources Revenue, the National Park Service, and the U.S. Fish and Wildlife Service. This provision responds to complaints by tribes that other bureaus and agencies within the Department will often enact policies or otherwise take action without considering the impacts on tribes or Indians or consulting with the BIA. Does the Department support the designation of an individual, whether or not that individual is an Under Secretary, to coordinate the activities and the policies of the BIA with other bureaus or agencies within the Department?

Response: First, consultation with tribal officials is an important component of ensuring strong government-to-government relationships with Indian tribes, and this Administration has made it a priority to ensure that Federal agencies carry out regular and meaningful consultation and collaboration with Indian tribes during the development of policies that have tribal implications, as defined by Executive Order 13175. With regard to the specific provisions of the bill, we note that the Deputy Secretary performs the duties that the newly constituted Under Secretary would perform. Moreover, as stated in the testimony for this hearing, the Department is in the process of evaluating recommendations made by the Trust Commission and any change in an organizational structure must be carefully evaluated and clearly and appropriately structured to be successful. The provisions in Title III of this legislation do not provide that clarity to the individual beneficiaries and tribes currently served by OST and the Department.

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Rep. Grijalva

H.R. 4350

1. If Great Northern Properties decided it wanted to develop its subsurface mineral rights that exist on the Northern Cheyenne Reservation, would they be able to do so?

Response: Great Northern Properties would need to complete several steps before developing its subsurface mineral rights underlying the Northern Cheyenne Reservation. Based on the type and location of the coal, development would likely have to occur via surface mining methods, and the Surface Mining Control and Reclamation Act of 1977 requires surface owner consent prior to commencing surface mining. Great Northern Properties would also have to complete a mine plan for approval by the Office of Surface Mining Reclamation and Enforcement.

2. Has Great Northern Properties ever contacted the Department of Interior about this bill? If so, what type of discussion has been had between the Department and the company?

Response: Throughout the development of this legislation, the Department, the Bureau of Indian Affairs, and the Bureau of Land Management have had numerous discussions with the Northern Cheyenne Tribe. In January 2014, the Northern Cheyenne Tribe invited the Bureau of Land Management-Montana/Dakotas State Office to meet with the stakeholders involved in the then-proposed bill. The meeting included tribal leadership, the tribe's consultant Norwest Corporation, Great Northern Properties, Signal Peak Energy, and Westmorland Resources, Inc. In addition, the BLM Montana/Dakotas State Office meets with resource users as a matter of course, and the State Office recently met with Great Northern Properties about a variety of issues. At that meeting, Great Northern Properties noted that it expected the legislation to be moving forward.

3. On the map dated February 27, 2014 where it shows the coal tracts to be conveyed to Great Northern Properties, it appears that the East Fork tracts are very close to the Crow Indian Reservation. Has the Crow Tribe expressed any concern over the conveyance of those tracts – so close to its reservation?

Response: The Bureau of Indian Affairs has not received any comments from the Crow Tribe of Montana regarding this proposed legislation.

4. In your testimony, you say that a NEPA analysis is required and therefore the 60 day timeframe for the land transfer is insufficient. NEPA is triggered by a major federal action, but since this transfer is mandated by Congressional legislation, I do not think NEPA applies. Can you comment on this?

Response: The Department believes that NEPA would apply to a limited set of agency decisions to implement the Congressionally directed transfer and the testimony suggested an appropriate timeframe – a minimum of 120 days – to provide for the necessary public input and complete the environmental analysis. Furthermore, that timeframe is appropriate to address other issues associated with the transfer

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that have been part of the ongoing discussions with the Northern Cheyenne such as the appraisal methods in the following question and response.

5. The Northern Cheyenne tribe has expressed concerns over appraisal methods that could potentially harm sacred ground on their reservation. In light of this, can the Department live without an appraisal being done? Are there ways to do an appraisal without disturbing sensitive areas?

Response: As noted in our testimony on this bill, when entering into exchanges of lands or interests in lands under the Federal Land Management Policy Act (FLPMA), the Department requires equal value exchanges and completion of an appraisal consistent with Uniform Appraisal Standards. The Department understands that H.R. 4350 seeks to address tribal settlement issues beyond the scope of FLPMA and recognizes the unique role Congress can play in arbitrating difficult issues such as this. The Department does not yet know the specifics as to what methods may be necessary to complete an appraisal, if appropriate, of the Great Northern Properties mineral estate underlying the reservation, and the extent to which existing information could be used is not yet known.

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H.R. 409

6. Regarding Title II of the bill, from its text, do you understand projects to be eligible for both tribal and federal management depending on the deal struck between a particular tribe and the Secretary? Please explain.

Response: Existing law (P.L. 93-638) already allows tribes to perform only a portion of a Program, Function Service or Activity (PFSA), rather than the entirety of that PFSA. The shared responsibility is negotiated between the federal government and the individual tribe on a case-by-case basis. H.R. 409 does not appear to alter that aspect of the law. Section 205 of H.R. 409 breaks the linkage between control of a program and liability for that program, by maintaining the federal government's full liability, even if a tribe is fully managing its assets.

7. We've received testimony about the Office of Special Trustee's involvement in the appraisal process and delays associated with having both OST and the BIA involved in generating appraisals. Does the Department continue to believe that two separate bureaucracies need to be involved in the appraisal process?

Response: There are not two separate entities that handle Indian trust lands valuation. The Office of the Special Trustee for American Indians (OST) Office of Appraisal Services (OAS) performs all Indian trust lands valuation. Secretarial Order No. 3240, dated March 12, 2002 realigned the Indian trust lands valuation and appraisal functions from the Bureau of Indian Affairs (BIA) to OST and established OAS within OST. Because the BIA is responsible for other realty activity, the purpose of the realignment was to ensure the independence from BIA realty functions and accountability of OAS in the performance of Indian trust lands valuation and appraisal functions.

OAS provides real estate appraisals, appraisal reviews, real estate consulting services and technical assistance to support real estate transactions for the BIA, Office of Hearings and Appeals, Department of the Interior's (DOI) Buy Back Program (BBP) and P.L. 93-638 Tribal Realty programs.

The Director, OAS, reports to the Principal Deputy Special Trustee for American Indians. In addition to the Director, OAS is comprised of two Deputy Directors (Regional Operations and BBP Valuations), 12 Regional Supervisory Appraisers, and 38 staff appraisers.

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8. OST was created to implement certain financial reforms to the administration of Indian trust funds and was never intended to be a permanent office. From your testimony, it sounds as if those reforms have now been implemented. If this is the case, why does a separate bureaucracy like OST continue to be needed to carry out these reforms?

Response: As noted in our testimony on this bill, OST's successful performance illustrates the need to have an organizational structure dedicated solely to the accounting of tribal and individual trust assets that remains separate from the BIA to ensure that principles of fiduciary management of trust assets are upheld. It is crucial that fiduciary duties be given a higher level of care, and the best way to ensure that is to segregate the fiduciary functions from other program functions. The Department is also hesitant to support the termination of OST until there is some certainty that any reforms put in place will perform as well or better without a significant burden to taxpayers.

9. Could the Department support the bill if Title I was stricken and Title III was amended to flesh out some details? Is the Department willing to work with tribes and the Committee to restructure these offices in a way that would ensure the best service to tribes?

Response: The Department has serious concerns with Title II as well, as was articulated in our statement.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

NOV - 4 2014

The Honorable Don Young, Chairman
House Natural Resources Subcommittee on
Indian and Alaska Native Affairs
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Assistant Secretary-Indian Affairs in response to questions received following the April 03, 2014, hearing before your Committee regarding "*Implementing the Cobell Settlement: Missed Opportunities and Lessons Learned*"

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa
Ranking Member

**Committee on Natural Resources Subcommittee on Indian
and Alaska Native Affairs Oversight Hearing
1324 Longworth House Office Building
April 3, 2014**

Oversight hearing titled *"Implementing the Cobell Settlement: Missed Opportunities and
Lessons Learned"*

*Questions from Chairman Don Young for Mr. Lawrence S. Roberts, Principal Deputy
Assistant Secretary- Indian Affairs, U.S. Dept. of Interior*

- 1. In March the Buy-Back Program made more than \$100 million in offers to owners of fractional interests at the Pine Ridge Reservation and these individuals have 45 days to accept or reject the offers. What is the acceptance rate so far for these offers?**

Response:

As of September 29, 2014, the Department has an approximate acceptance rate of 48% based on the three sets of offers to landowners with interests at the Pine Ridge Reservation. The Program's acceptance rate on all of the offers that have been sent to landowners with interest is 36%.

- 2. In the hearing, you heard from Chairman Finley that four years ago the Administration opposed changing the Cobell Settlement Agreement to allow tribes to contract the Buy-Back program under the Indian Self-Determination Act. Is this still the Administration's position?**

Response:

The Department strongly supports the spirit of self-determination and self-governance. Although the Cobell Settlement Agreement (Settlement) and the Claims Resolution Act do not allow the use of Indian Self-Determination and Education Assistance Act (ISDEAA) agreements to operate Buy-Back Program activities, the Buy-Back Program gains the benefit of tribal participation by entering into cooperative agreements and more informal arrangements with tribes to undertake land consolidation tasks.

The Department and the Administration are strong supporters of the ISDEAA. However, any proposed changes to the Buy-Back Program must take into account the progress we have made in the Program and the potential delays and additional implementation costs that a new process may cause.

In comparison to other federal programs, the Land Buy-Back Program's limited, ten-year time frame and its 15 percent cap on implementation costs (for outreach, land research, valuation, and acquisition activities) are unique. The parameters in the Settlement necessitate relatively intense, short-term activity at each location to maximize the number of the 150 locations and the some 245,000 individual land owners that may participate in the Program. If the ISDEAA were extended to the Buy Back Program, the ten-year deadline established by the Settlement would likely need to be extended to provide the Program, and tribes, the additional time necessary:

to consult with tribes to determine an appropriate method for allocating

implementation costs under ISDEAA agreements;

- to provide training and conduct security clearances for tribal staff at each location that seeks to accept responsibility for the Program's acquisition phase through an ISDEAA agreement;
- for tribes that choose to use a site-specific appraisal approach rather than a mass appraisal approach; and
- for the Buy-Back Program to transition to any amendment to ensure that it has proper staff and intra-agency agreements in place to implement the law. Even if every tribe chose to utilize ISDEAA agreements, the Program would need to maintain staff to provide final approval of appraisals and land transfers.

Moreover, acquisition and payment processing time may vary from tribe to tribe under ISDEAA agreements. Currently, the Department is able to print and mail 2,000 offers per day and pay owners promptly that sell their fractional interests (since December 2013, the Program has paid owners an average total of \$667,000 per day). The process integrates land title and trust fund systems of record, which enables landowners to receive their offer packets shortly after appraisal completion. Payments for accepted offers are deposited directly into their Individual Indian Money accounts typically within an average of five business days of receiving a complete, accepted offer package.

In addition, and as indicated above, additional funding could be necessary, should the ISDEAA be extended to the Buy Back Program, for:

- tribal and Interior administrative costs associated with any extension of the current 10 year implementation deadline;
- tribes to prepare proposals and negotiate with Program representatives, including resources to provide technical assistance to tribes for the development of agreements;
- implementation of changes to processes that have already been established;
- appraisal work, which may increase (the Buy-Back Program uses primarily mass appraisal methods whereas most tribes in ISDEAA programs use site-specific appraisals); and
- full contract support costs, which would need to be provided under ISDEAA agreements (the Buy-Back Program currently provides up to 15 percent in indirect costs through cooperative agreements to minimize implementation expenses consistent with the Settlement).

Existing Buy-Back Program costs and functions for tribes not interested in utilizing ISDEAA agreements would remain the same; consequently, the Buy-Back Program would continue to need funds to maintain capacity for the Department to implement the program.

If the ISDEAA was extended to the Buy-Back Program without additional funding, it is

likely that the \$285 million administrative cost cap would be reached well before the fund available to purchase land is exhausted. Thus, any increase in costs associated with an ISDEAA extension would need to be authorized and appropriated so that such costs do not diminish the funds available to return lands to tribes.

- 3. The Committee has received testimony that CGI Federal, the same federal contractor that developed the healthcare.gov website, is also involved in the Buy-Back program and may even have an ownership interest in the TAAMS system. What involvement does CGI Federal have with the program?**

Response:

CGI Technologies and Solutions, Inc. is a subsidiary of CGI Federal. CGI Federal was the lead contractor on the website for the Affordable Care Act. The Bureau of Indian Affairs (BIA) awarded CGI Technologies and Solutions, Inc. the contract for ADP Systems Development Services and Automated Information System Design and Integration Services. The result of that contract is the Trust Asset Accounting Management System (TAAMS). In 2013, BIA requested that a new TAAMS module be developed specifically to manage Land Buy-Back land purchases. BIA also approved a Task Order for CGI to manage the Print/Mail/Scan/Review portion of the acquisition process.

- 4. The Committee is aware that some tribes have expressed a desire for the Buy-Back funds to be able to be invested or otherwise earn value to maximize the number of interests that can be purchased. Does the Department agree with this concept? If so, can it provide the Committee with a proposal on how this could be accomplished?**

Response:

The Department has no authority to invest the Trust Land Consolidation Fund (Fund). The Cobell Settlement sets forth the precise purpose and use of the Fund. It states, in pertinent part, as follows:

“The Trust Land Consolidation Fund shall be used solely for the purposes of (1) Acquiring fractional interests in trust or restricted lands; (2) Implementing the Land Consolidation Program; and (3) Paying the costs related to the work of the Secretarial Commission on Trust Reform, including costs of consultants to the Commission and audits recommended by the Commission. An amount up to a total of no more than fifteen percent (15 percent) of the Trust Land Consolidation Fund will be used for purposes 2 and 3.” (*Cobell Settlement Agreement* at ¶ F(2).)

Under the terms of the Settlement, any unexpended funds revert to the Department of the Treasury if not expended within ten years. The Department has no authority to utilize, disperse, retain, or invest any portion of the Fund in a manner inconsistent with the mandates of the Settlement, as ratified by the United States Congress through the Claims Resolution Act of 2010.

If legislation were enacted either authorizing investment of or providing for the payment of interest on the Fund, such authority should be granted to either the Department or to the U.S. Treasury. All interest income earned from investment of the Fund should inure to benefit of the Fund.

5. What amendments can be made to the Cobell Settlement Agreement or other applicable federal law to improve the success of the Buy-Back Program for Indian tribes?

Response:

We are pleased with the success of the Program thus far. Thus far, we have successfully concluded transactions worth almost \$146 million, restoring the equivalent of nearly 280,000 acres of land to tribal governments.

From the lessons we have learned thus far there is one area for improvement. The Settlement established the \$1.9 billion Trust Land Consolidation Fund for the purchase of fractional interests. Despite the large size of the Fund, it is unlikely to contain sufficient capital to purchase all fractional interests across Indian country.

In terms of amendments to the Cobell Settlement Agreement or other applicable federal law, Congress may want to consider amendments that would clarify a State's ability to share appraisal information with the Buy Back Program. We have observed this to be a hurdle in some states and clarifying language could address such situations.

Questions from Ranking Member Colleen Hanabusa, for Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary - Indian Affairs, U.S. Dept. of Interior

- 1. Mr. Roberts - The Claims Resolution Act of 2010 states that the Secretary has 10 years from the date of the final settlement to spend the \$1.9 billion of the Trust Land Consolidation Fund. By my calculation, we are already about 4 years in and the Department has just recently sent purchase offers to 3 tribes. At this rate, do you expect the 10 year window to be long enough to enable you to spend all of the \$1.9 billion?**

Response:

The Department is committed to implementing the Program in the most efficient and cost-effective manner. The Settlement was confirmed by the Claims Resolution Act of 2010 and approved with finality on November 24, 2012, after appeals were exhausted through the U.S. Supreme Court. The ten-year period occurs from November 24, 2012 (the date of Final Approval of the Settlement) to November 24, 2022.

During the first year of the Program, the Department focused on joint planning with tribes, cooperative agreements, staffing, and designing and laying out the strategy, methods, and key systems for this ten-year Program. Tribal involvement, transparency, flexibility, timely decision making, and ongoing communication throughout the life of the Program are critical to its success.

In less than one year we have successfully concluded transactions worth almost \$138million, restoring the equivalent of nearly 277,000 acres of land to tribal governments (these transactions relate to eight different locations). Deputy Secretary of the Interior Michael Connor announced a schedule through 2015 for the continued implementation of the Program that identified locations representing more than half of all the fractional interests and unique owners across Indian Country. The Department is planning to announce additional locations before the end of the calendar year.

One approach that the Department is using to expend the Fund in a timely manner is the use of mass appraisal techniques. The breadth, scale, limited funding, and bounded life span of the Program necessitate the use of mass appraisal methods where appropriate. The Department intends to implement the Program fairly and equitably, moving quickly to reach as much of Indian Country as possible during this ten-year period. Mass appraisal is an efficient way to quickly determine fair market value for a significant number of fractionated tracts. By using the mass appraisal method where applicable, the Program can maximize the number of owners that can receive payments for the interests they decide to sell, and therefore the interests that will be immediately restored to the tribes.

- 2. Mr. Roberts – When can members of the Trust Administration Class expect their payments? Why have there been delays in issuing them?**

Response:

The Cobell v. Salazar lawsuit ended in a settlement agreement approved by Congress and by the United States District Court for the District of Columbia, where the case was filed.

Under the settlement agreement, the Federal Government paid approximately \$1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a (“No Stage 2 [TAC] payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.”).

Plaintiffs hired (and the court approved) the Claims Administrator, Garden City Group (GCG), to make the distribution. In late 2012, the district court approved the first round of settlement payments to the Historical Accounting Class (HAC), also identified as Stage 1 payments. In the Stage 1 payments, each class member was paid \$1,000. On January 23, 2014, the district court granted a motion by Plaintiffs to add almost 13,000 members to the HAC.

Plaintiffs are now preparing to make the Stage 2 settlement payments to members of the TAC. This part of the settlement calculation is more complicated because the dollar amount paid to class members will vary according to how much money was deposited in his or her Individual Indian Money (IIM) account over time.

Trust Administration Class members who had no IIM account, or who had no money deposited to an IIM account, will receive a minimum payment. That minimum amount is based on: (1) the total number of class members; and (2) the amount of money left in the settlement fund after paying the Stage 1 settlement payments (plus the expenses of administering the settlement). Plaintiffs cannot perform these calculations for Stage 2 until they can identify the final number of class members and reasonably estimate the amount of money available in the settlement account after expenses.

Pursuant to the Settlement Agreement, a Special Master was appointed to make determinations regarding the eligibility of individuals to participate as members of the TAC. Before the TAC can be finalized, the Special Master must resolve the appeals that “self-identifying” putative TAC members made after they were denied inclusion into the class by GCG. The Special Master is still considering those appeals, and we have no time frame for when the appeals will be resolved. Once the universe of TAC members has been identified, the calculation of TAC settlement payments can be completed.

- 3. Mr. Roberts – A private firm, the Garden City Group, is arranging to send out payments to the Trust Administration Class, but ultimately, executing this duty is a federal responsibility. Who in the Department is responsible for overseeing the work of the Garden City Group and how are they addressing class member concerns that expected payment dates keep getting pushed back?**

Response:

Plaintiffs, not the federal government, have the responsibility to disburse payments to the members of the Cobell classes pursuant to the Settlement Agreement and the legislation authorizing its implementation. Payments to individual class members are not considered trust unless and until they are transferred to the Department pursuant to the settlement provisions noted below. They are aided in that task by the appointed Claims Administrator, Garden City Group (GCG). The government's limited involvement includes supplying the "best and most current" contact information for each beneficiary class member and indicating if the class member is a minor, non-compos mentis, an individual under legal disability, in need of assistance, or whose whereabouts is unknown, as well as receiving and holding proceeds for individuals with IIM accounts who are identified in DOI's data as "whereabouts unknown." See, e.g., Settlement Agreement at E.1.g ("Defendants' Limited Role. Except as specifically provided in this Agreement, Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies in the Qualifying Bank or the distribution of such monies.").

With the settlement funds in a private bank, the settlement distribution is entirely a private task, with the government merely providing data (i.e., contact information, whereabouts unknown information, etc.) to support Plaintiffs' (and GCG's) effort. Although the federal government is not in charge of the Cobell settlement distributions, the Department of the Interior does have program responsibility for another part of the Cobell settlement: use of the \$1.9 billion Congress appropriated to buy back highly sub-divided allotments on a voluntary basis from individual land owners. In contrast to the monetary payments to class members, this "Land Buy Back" portion is the responsibility of the Department of the Interior.

The Department of the Interior is not charged (by the Settlement Agreement or otherwise) with overseeing the work of the Claims Administrator GCG. With that in mind, individuals within the Department (specifically, officials within the Office of the Special Trustee and Office of the Solicitor) are working collaboratively with GCG for the delivery of the contact information and to help resolve any questions or concerns that may arise about the data. Supervision and oversight of the Claims Administrator, however, remains with the district court.

4. Mr. Roberts - Does the Department have enough personnel to ensure the timely implementation of the Land Buy-Back Program?

Response:

The Program currently employs 56 full-time employees (Program Office 10, Bureau of Indian Affairs 14, Office of Minerals Evaluation 13, and Office of Appraisal Services 19). In addition, tribes may hire approximately up to 29 tribal staff through funding available under cooperative agreements. The Program is also utilizing contractors, particularly for acquisition (print/mail/scan) and appraisal services.

Tribes will also continue to have an active role in implementing the Program, particularly with respect to outreach activities. It is critical that the Buy-Back Program and tribal leaders work together to ensure that landowners are made aware of the opportunity to sell their interests for the benefit of both the landowner and tribal communities. The Department hopes to enter into cooperative agreements with as many interested tribes as

possible to take advantage of tribes' ability to minimize administrative costs and to improve the overall effectiveness and efficiency of the Buy-Back Program. The Department currently has formal or informal agreements in place with 12 tribes: Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Confederated Tribes of the Umatilla Indian Reservation, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboine and Sioux Tribes, Gila River Indian Community of the Gila River Indian Reservation, Makah Indian Tribe of the Makah Indian Reservation, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Oglala Sioux Tribe of the Pine Ridge Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe of North and South Dakota, and the Crow Tribe.

5. **Mr. Roberts - I have heard that the Department is focusing on only 40 tribes to conduct the land buy-back program even though there are 150 tribes with fractionated land shares. Are those claims accurate? If so, why are you focusing on only 40 tribes?**

Response:

It is not accurate that we are only focusing on the top 40 tribes. It is true that approximately 90 percent of the purchasable fractional interests are located within 40 of the 150 locations with purchasable fractional interests. As a result, as a practical matter, the Department must focus a great deal of its *initial* efforts among these highly fractionated locations. While the Program will be implemented at locations that hold the highest amount of purchasable fractional interests, the Department will also pursue implementation activities with tribes at locations that represent the approximately 110 locations with the remaining 10 percent of the fractionated land. Efforts are already underway at several less-fractionated locations including the Makah, Coeur d'Alene, Squaxin Island, Swinomish, Prairie Band, Quapaw, and Lummi Reservations.

6. **Mr. Roberts – Many tribes already implement their own fractionated shares buy-back programs with their own funds. These tribes are eligible for the Cobell Settlement's Land Buy-Back program, but they have had to wait in a long line to access settlement funds. Meanwhile, they have been continuing to implement their own programs with their own funds. Is the Department open to using the Trust Land Consolidation Fund for reimbursing tribes for fractionated land purchases from November 2012, the time the Cobell Settlement was officially final, to the time Interior is able to make them an offer?**

Response:

The Department is open to exploring every possible avenue to efficient, timely, and cost effective purchases of fractionated interests consistent with the requirements of the Settlement, the Indian Land Consolidation Act, the Claims Resolution Act of 2010, and all other applicable laws.

We have also made tribes not immediately slated for implementation in the next year aware of the opportunities and tasks that they can undergo right now to help prepare for the smooth transition when the Program moves to their location.

7. **Mr. Roberts-Some tribes have expressed concerns with the Department's one-size-fits-all approach to implementing the land buy-back program. How do you respond to that criticism and can you understand the need for the Department to take a more tailored approach?**

Response:

The Department recognizes the uniqueness of each location and tribal government, will continue to consult with tribes individually, and will continue to evaluate tribal proposals individually before initiating Buy-Back Program activities on the respective reservations. The Program's Tribal Relations Advisors are responsible for working closely with each tribe to understand its concerns and unique goals. Each cooperative agreement between the Program and individual tribes is unique in time, scope, and responsibilities based on the expressed interests of the tribe.

Cooperative agreements present an opportunity for tribes and the Program to move forward together by providing funding for tribes to perform certain tasks, such as outreach to the landowners. While much can be accomplished through these agreements, cooperative agreement funding should be viewed as a short-term resource to achieve the much larger and more valuable goal of land consolidation. Accordingly, the Program must award agreements with an eye toward efficiency without engaging in protracted cooperative agreement negotiations that detract from the objective of providing individual landowners with offers of fair market value for their fractionated interests in trust or restricted land.

A Scope of Work Checklist has been developed in response to tribal feedback requesting details about the work involved and templates to streamline the process for entering into agreements. While this checklist outlines baseline parameters and tasks, it does not preclude tribes from proposing other pertinent tasks or activities given the unique circumstances of their locations.

The Program has worked diligently to facilitate and expand tribal involvement in land consolidation efforts, in part by hiring staff dedicated to those goals. It also strives for a cooperative agreement process that is as streamlined as possible, while still meeting all Federal and Departmental regulations and requirements associated with the awarding of any financial assistance. These requirements, such as completing the mandatory SF-424 Application for Federal Financial Assistance forms and complying with the applicable procurement regulations and cost principles, apply to all financial assistance awards, including grants, unless statutorily exempted.

8. **Mr. Roberts-Chairman Berrey claims that the Department refused to work with his tribe to purchase fractionated shares in a Superfund site. Is this true? If so, why is this? Shouldn't the tribe be able to use Settlement funds to consolidate shares on any of its lands it sees fit?**

Response:

The Department recently announced a list of locations where it would implement the program and the Quapaw Tribe is included on that list. The Department has in fact already sent offers to Quapaw that are outside the Superfund site and is working to finalize those purchases. Although fractionated shares within the Superfund site present complex legal

and practical challenges, the Department is working with the Department of Justice on whether and how the Department can purchase such parcels. The Department continues to keep the Tribe apprised of its efforts.

9. **Mr. Roberts – Our tribal witnesses today universally support Indian Self-Determination Act contracting over other cooperative agreements. If Congress worked on a bill to permit tribes to enter into ISDEAA contracts to administer the Buy-Back Program, would the Department support it?**

Response:

Please see page 1, answer 2 in response to the Chairman's similar question

Questions from Rep. Raul Grijalva, for Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary- Indian Affairs, U.S. Dept. of Interior

- 1. Mr. Roberts, I understand there are 5 tribes that have successfully entered into Cooperative Agreements with the Department already, can you share with us how has the Department concluded the Agreements with those 5 tribes?**

Response:

The Department has entered into agreements with ten tribes (Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Confederated Tribes of the Umatilla Indian Reservation, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboine and Sioux Tribes, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Oglala Sioux Tribe of the Pine Ridge Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe of North and South Dakota, and Crow Tribe). The Department also has a Memorandum of Agreement with Gila River Indian Community of the Gila River Indian Reservation, and an informal working agreement with Makah Indian Tribe of the Makah Indian Reservation. The Department expects to finalize additional agreements in the near future.

In order to negotiate an agreement, the Program's Tribal Relations Advisors, in coordination with field staff, work closely with tribal leadership to define a scope of work that will enable the tribe to accomplish its goals for the Program. The time it can take to reach each agreement is dependent on each tribe's procedures, which can vary dramatically in terms of needed approvals. The tribal point of contact and the Tribal Relations Advisors are in regular contact via email and in-person meetings throughout the process.

- 2. Mr. Roberts, let me turn your attention away from the land Buy-Back Program and to the initial aim of the Cobell Settlement, can you give me the latest update and progress on the Historical Trust Administration established to compensate Individual Indian Money (IIM) Account Holders?**

Response:

The Cobell v. Salazar lawsuit ended in a settlement agreement approved by Congress and by the United States District Court for the District of Columbia, where the case was filed. Under the settlement agreement, the Federal Government paid approximately \$1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process

provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a (“No Stage 2 [TAC] payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.”).

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- 3. Mr. Roberts, I am also interested in the investment on the education of Indian Youth side of the Cobell Settlement. I believe that \$60 million of \$1.9 billion dollars Trust Land Consolidation was contributed to Indian Education Scholarship (aiming at improving access to higher education for Indian youth), can you give us an update and progress of this Scholarship Program? And how many Indian youth have benefited from this fund already?**

Response:

In accordance with the terms of the Settlement the Department of the Interior will contribute up to \$60 million to the Scholarship Fund. Contributions to the Scholarship Fund are based upon the formula outlined in the Settlement setting aside a certain amount of funding based on the value of the fractionated interest sold. As the offer sets for the individual reservations receiving offers are completed, scholarship funds are transferred to the Indian Education Scholarship Holding Fund (Holding Fund). At the end of each

quarter, the funds are transferred from the Holding Fund to the American Indian College Fund. The first payment was made at the end of March 2014 and the second at the end of June 2014. To date, the Department has transferred more than \$3.4 million to the American Indian College Fund. Another transfer of approximately \$1 million will occur in the near future.

The American Indian College Fund, headquartered in Denver, Colorado, administers the Scholarship Fund and provides students with the resources to succeed in tribal colleges and technical and vocational certifications as well as traditional undergraduate and graduate programs. A five-member Board of Trustees is responsible for the oversight and supervision of the College Fund's administration of the Scholarship Fund and for developing and adopting a charter outlining its role and responsibilities. The American Indian College Fund is responsible for establishing the eligibility criteria for the award of scholarships as well as for managing and administering the Scholarship Fund. Twenty percent of the Fund's portfolio will be directed to support graduate students through the American Indian Graduate Center in Albuquerque, New Mexico. Benefits to Indian students as a result of these scholarships are anticipated in the near future.