

TESTIMONY OF HON. MARVIN WEATHERWAX, JR.,
MEMBER OF THE BLACKFEET TRIBAL BUSINESS COUNCIL
BEFORE THE SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS
Oversight Hearing “Examining the Opportunities and Challenges of Land Consolidation in
Indian Country”
January 30, 2024

Good morning, Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee. My name is Marvin Weatherwax Jr. and I am a member of the Blackfeet Tribal Business Council. I also serve as Chairman of the Coalition of Large Tribes (COLT), and as a Representative of District 15 in the Montana Legislature.

I appreciate the opportunity to provide testimony on the implementation of the Land Buy-Back Program. My Blackfeet Tribe views the Program as an important tool to restore Blackfeet ownership of Reservation lands. Our Tribe has enacted laws to maximize the utility of monies available under the program and devoted our own resources separately to land reacquisition as part of our broader efforts to restore as much land as possible from our 1855 Treaty to Tribal ownership and control. We believe removal of current bureaucratic impediments is central to achieving the goals of the Land Buy Back Program.

Our story mirrors that of other large land base tribes. Our original Reservation spanned from the eastern front of the Rocky Mountains to the eastern border of Montana and from the Yellowstone River on the South all the way to Northern border with Alberta, Canada. But our land losses were staggering for more than a century. The failed federal assimilationist allotment policy resulted in the loss of many millions of acres of lands across Indian Country, and hundreds

of thousands of acres across the Blackfeet Reservation alone. During the starvation winter of 1883, our Chiefs were forced to sign another treaty to receive rations in exchange for 130,000 acres of land that was to be given to the U.S. Forest Service. In 1911, the Blackfeet were subjected to the “Blackfeet Allotment” where another 156,000 acres were sold as “surplus” to non-Indians.

By 2012, when the Land Buy-Back Program was established, the Blackfeet Tribe had lost 90% of our original Reservation and had the third highest amount of fractionated land in the United States, making use and management of these lands difficult, and in many cases impossible, because of the large number of landowners—often hundreds of owners per parcel—and the resultant difficulty in contacting and securing the consent of those landowners for a particular use. A large percentage of the fractionated interest owners are Indians that are not enrolled in our Tribe, but instead are members of other tribes, which makes land use and management decisions even more complex.

For the past three decades, well before the birth of the Land Buy-Back Program, the Blackfeet Tribe has dedicated considerable resources to the restoration of our Reservation land base. We have enacted laws, dedicated Tribal revenues, and developed Tribal programs to reacquire Reservation lands within our Treaty Reservation boundaries. To prevent further loss of lands, we enacted a “right of first of refusal” ordinance for on-Reservation land sales which has allowed us to receive notice of opportunities for land reacquisition so we can move quickly to engage with landowners.

Our Tribal GIS staff have thoroughly mapped our Reservation so we have data that helps us make informed decisions. Most importantly, our Tribal staff devoted extensive efforts to community engagement to earn the confidence of Reservation landowners.

Both from our own efforts and with the resources of the Land Buy-Back Program, the Blackfeet Tribe has been successful in the consolidation of more than 196,000 fractional interests and more than 490,00 equivalent acres in more than 14,000 land transactions.

Based on the Blackfeet Tribe's experience, I have four concrete recommendations that would make the Program more successful without additional funding, although I note that additional funding is desperately needed and warmly welcomed:

1. First, we would like to see more flexibility in uses for Program monies. The Land Buy-Back Program is a narrow but effective tool that provides a means to restore Tribal ownership of fractionated interests in Trust allotments. The Blackfeet Tribe, like other large land base tribes, has developed a Land Department and has charged it with the management of land and resources. The Blackfeet Tribe would like to be able to utilize Program funding to support the Land Department as it continues to grow in ways to support the agri-businesses of the Tribe and Tribal members; to implement the HEARTH Act for expansion of on-Reservation housing stock; and to track and process data relating to fractionated interest holders, GPS, land use, water rights, precipitation, sunlight, leases, and rights-of-ways management. The flexibility would not create additional costs.

2. Second, we would like to see more and better BIA investments in technology. The Bureau utilizes an antiquated and ineffective system to manage land. Our Tribe and others are utilizing and creating innovative and cutting-edge technology to better manage the tribal land and resources. Our landowner engagement has been effective because we have "reinvented the wheel," by recreating federal data to which we are denied access (TAAMS). But our Land Department needs training, hardware, software and planning to achieve both short-term and

long-term goals, and we need ready access to federal land management systems' data. This flexibility would not create additional costs.

3. Third, Land Buy-Back Program should be expanded to other categories of land, such as in the Blackfoot Tribe's case, lands alienated in the Blackfoot Allotment Act of 1911. By allowing Land Buy-Back funds to be used to acquire lands beyond "fractionated interests," the broader land-back mission can be fulfilled. Our land losses took many forms and the Land Buy-Back monies should have flexibility to allow for reacquisition of any lands alienated from original Treaty boundaries. Again, this flexibility would not create additional costs.

4. In sum, for these three recommendations, maximum flexibility in the Land Buy-Back Program would be best—namely distribution of the monies directly to tribes to use as they see fit each year in one block grant with a single annual audit.

5. Lastly, Congress should direct the Department of the Interior to enforce other federal land reacquisition statutes that are already on the books. For example, the Indian appropriation act of September 21, 1922,¹ provides:

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to issue a patent to the duly authorized missionary board, or other proper authority, of any religious organization engaged in mission or school work on any Indian reservation for such lands thereon as have been heretofore set apart to and are now being actually and beneficially used and occupied by such organization solely for mission or school purposes, the area so patented to not exceed one hundred and sixty acres to any one organization at any station: **Provided, that such patent shall provide that when no longer used for mission or school purposes said lands shall revert to the Indian owners.** (Emphasis supplied).

¹ 42 Stat., 994, 995 ("1922 Act").

The 1922 Act placed restrictions of fee patents associated with Indian Boarding Schools in direct response to abuses by churches whereby they were acquiring fee patents to many thousands of acres of reservation lands far in excess of any education needs and they were likewise using the Indian Boarding Schools as otherwise illegal child / slave labor under abhorrent conditions. The 1922 Act requires the return of thousands of acres of land to tribes right now. Statutes like the 1922 Act are a ready supplement to the Land Buy-Back Program and their enforcement would bolster reservation economies and likely provide other important health and education benefits—all without any additional funding.

In conclusion, while my testimony has focused on non-monetary improvements, I echo the focus of Director LaCounte’s testimony, without dramatically more funding for the Land Buy Back Program, we will soon be worse off than we were pre-*Cobell* because of the incessant proliferation of land fractionation. In FY 2023, DOI requested \$80 million for Land Buy-Back and got \$8 million. In FY 2024, OMB limited DOI’s ask to \$8 million. These dribs and drabs are not at all sufficient to meet the need. Funding of the Land Buy-Back Program should be tailored to what is needed to actually achieve the objectives, not keep us on the hamster wheel of the “same number as last year.”

On behalf of the Blackfeet Tribe, I appreciate the opportunity to provide our perspectives on the Land Buy-Back Program. We look forward to working with the Subcommittee and any Administration to ensure its continued and greater success on our Reservation and for other large land base tribes.