

TRUST REFORM AND *COBELL* SETTLEMENT WORKGROUP

PRINCIPLES FOR LEGISLATION

June 20, 2005

The Trust Reform and *Cobell* Settlement Workgroup presents these Principles for Legislation as the basis for resolving the nine-year court battle in *Cobell v. Norton* concerning the federal government's failure to account for trust funds held for American Indians and for reforming the federal government's systems for tribal and individual trust management. The Workgroup was organized by National Congress of American Indians (NCAI) President Tex Hall and Inter-Tribal Monitoring Association (ITMA) Chairman Jim Gray and includes the *Cobell* Plaintiffs, tribes, individual Indian allottees, and Indian organizations.

The Principles were drafted in response to a request by Senator John McCain (R-AZ), Chairman of the Senate Indian Affairs Committee, Senator Byron Dorgan (D-ND), Vice Chairman of the Senate Indian Affairs Committee, Congressman Richard Pombo (R-CA), Chairman of the House Resources Committee, and Congressman Nick Rahall (D-WV), Ranking Member of the House Resources Committee. The lawmakers asked Indian Country to provide a set of principles that would guide the lawmakers' drafting of legislation to provide for a prompt and fair resolution of the trust issue.

The Principles include four major areas: (1) historical accounting of individual Indian trust accounts, (2) reforming the individual and tribal trust systems, (3) Indian land consolidation, and (4) individual Indian resource mismanagement claims.

Historical Accounting of Individual Indian Trust Accounts

1. Any funds used for the settlement of the historical accounting claim should not be scored against any agency nor should any agency appropriations be diminished to satisfy any judgment. The Claims Judgment Fund is a perfect source since it is a permanent and indefinite appropriation.

Rationale

Using agency funds towards any settlement would simply be unjust. Congress needs to appropriate more funds, not less, toward the management of trust resources. There are many desperate needs in Indian Country, including substandard housing, dilapidated schools, and serious health problems. A fair and acceptable settlement amount will require significant funds. If those funds come from monies otherwise used for Indian programs, it would make the already horrific, inadequate funding crisis that much more intolerable. The better approach and the one we recommend is to use a source of funds that is not scored.

2. Settlement legislation should expressly recognize that adequate accountings in conformity with law cannot be performed. Because of the loss and destruction of so many of the trust documents needed to perform an adequate accounting required of a trustee, it is impossible to do an accounting except to the extent an alternative methodology is used as set forth in Principle 3 and 4.

Rationale

The federal government recently estimated that a transaction-by-transaction accounting required by law would cost \$12-13 billion and “perhaps significantly more” and the result in the end would render an inadequate accounting.

3. A “lump sum” amount reflecting the aggregate correction of accounts should be adopted as the settlement figure.

Rationale

There are two potential approaches to settling the historical accounting claim – a determination of a fair settlement amount based on the known facts and the law of the case or, alternatively, there can be an agreed upon process to determine a fair settlement amount. Because of the loss and destruction of documents, any “accounting” process that is not consistent with trust law is suspect and a derogation of Indian beneficiaries’ rights. For this and the other reasons outlined above, the better approach and the one that should be implemented by the settlement legislation is the lump sum approach.

4. For the reasons outlined in Principle 2, an adequate accounting is impossible; but that does not mean there is not a way to calculate the necessary aggregate correction of accounts and determine a reasonable settlement amount consistent with trust law. Importantly, there is general agreement between the parties about the aggregate amount which has been generated by the trust (*i.e.* between \$13 and \$14 billion for a designated period). Those deposits earn compound interest. The requirement that interest and imputed yields are due has been confirmed by the District Court and Court of Appeals in *Cobell v. Norton*. Any amounts which can be proved to have been properly distributed to the correct beneficiary could be deducted. But, the records are not there to make such a determination. Even when significantly discounted and substantially reduced in consideration of litigation risks, this analysis justifies a sum specific settlement amount of \$27.487 Billion.

Rationale

There is ample justification for the proposed settlement amount. The potential liability of the federal government well exceeds \$100 billion, given the aggregate amount of trust proceeds collected from Indian lands and the interest due on such funds. Much of these funds never were collected and distributed to the proper Indian landowner. Moreover, the government, because of destruction of trust records in violation of their fiduciary duties can establish with competent evidence only a small fraction of the transactions involving these trust funds. A fundamental principle of

trust law is where “the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor.” IIA SCOTT ON TRUSTS § 173. Thus, all funds the government, like any trustee, cannot prove were collected and distributed to the correct Indian landowner, are owed.

In fact, understanding the astounding level of mismanagement of these large sums of money, the government’s own contractor in an internal memorandum, placed the government’s liability as between \$10-40 billion. SRA International Inc. “Risk Assessment” at 5-1 (2002).

Another critical factor supporting the reasonableness of this figure is the costs of the historical accounting required by law. The government estimates that the accounting may cost \$12-13 billion or “perhaps significantly more.” That is how much they must spend just to figure out how many billions they in fact owe. And that estimate may very well be considerably low. It is important for Congress to recognize that the cost associated with an accounting is exorbitant and money that is not well spent given that an accurate accounting cannot be accomplished.

An example of the potential costs associated with an accounting is the Administration’s effort two years ago to produce what it initially called an “accounting” for four accounts of the lead plaintiffs in the *Cobell* case. Although the government spent approximately \$23 million, the so called “accountings” were facially deficient and plainly did not discharge their legal obligation to account. As a result, the government since has retreated from this position, admitting in recent court papers that the so-called “accountings” were nothing more than a very expensive “expert report.” All this is to say that resolving the historical accounting claim will save literally billions of dollars the government will otherwise have to spend to produce an accounting that will be inadequate in any case.

In light of these and other factors and with calculation of significant discount for litigation risk (even though given the settled issues of the case, the risk is modest), the Workgroup believes that the sum of \$27.487 Billion is reasonable as the aggregate settlement amount.

5. No settlement legislation should seek to individualize the claims of beneficiaries – this is an inherently unfair approach. The settlement must be on a class-wide basis.

Rationale

Courts have had experience with break-up-the-class type approaches, which place individual plaintiffs in perilous positions. The Black Farmers case, *Pigford*, is a perfect example. There, the vast majority of claimants received no funds because most were forced to proceed *pro se* up against Department of Justice lawyers. Because they were not represented by counsel and lost the advantage of the class action, they failed to establish their claims – many because of missed filing deadlines. Individual beneficiaries should not be placed in such a dangerous position by any settlement scheme.

6. The agreed settlement amount must be fair. To ensure a fair amount, class representatives must consent to the aggregate settlement amount.

Rationale

Without such consent, the legislation will likely be constitutionally infirm.

7. The settlement sum shall be paid into the court registry. Court approved payment to beneficiaries, along with the other settlement provisions, shall constitute a full, fair, and final settlement of *Cobell v. Norton*.

Rationale

The court can have “fairness” hearings and provide the due process necessary to distribute any funds appropriated towards the settlement. Courts distribute large class action awards all the time and know how to distribute the funds in a fair and equitable manner. Neither Congress nor the Executive Branch have the necessary experience, expertise or institutional competence to hold fairness hearings, provide notice, flexibly modify the distribution based on new information and provide necessary finality.

8. Because this is income derived from trust property, legislation should include an express clause that any monies received by an individual beneficiary will not be considered in determining eligibility for state or federal benefits including but not limited to TANF, Social Security, Medicaid and Medicare and that such monies shall not be taxable income. Furthermore, an additional provision shall be included expressly stating that no sums paid hereunder shall be utilized as offsets by the federal government for claims it may have against the recipient.

Rationale

Beneficiaries should not be penalized by the receipt of settlement proceeds intended to restore to them a portion of their own money wrongly withheld due to the historical mismanagement of the Individual Indian Trust.

9. Rulings of the Trial Court and Appellate Court in *Cobell v. Norton* shall be followed and applied in providing, implementing, and interpreting the legislative settlement.

Rationale

To date, there have been more than 80 published decisions in this nine-year-old case. At this point, the legal principles announced in the decided opinions constitute the “law of the case.” Therefore, the legislative settlement should be developed and implemented in full accord with the courts’ decisions unless -- with the consent of the parties -- Congress expressly legislates to the contrary, and then only as to issues that are not Constitutionally protected.

10. The distribution or allocation of the settlement amount to the IIM beneficiaries should be determined by the district court in conformance with the customary method of resolving class action litigations in federal courts. Federal Rule of Civil Procedure 23 shall be used, including a fairness hearing and in the resolution of other administrative matters.

Rationale

Courts are ordinarily the entities that make determinations regarding distributions particularly in complex matters. To ensure constitutionally protected due process is afforded, including notice and opportunity to be heard, it is important that the allocation of the settlement amounts to beneficiaries be done in the manner it is normally done in complex class action settlements. Federal Rule of Civil Procedure 23, along with the many cases interpreting Rule 23 offers a known and knowable mechanism to determine distribution, after beneficiaries have been provided adequate notice and an opportunity to be heard. Courts are better institutions to weigh competing interests in light of facts as known to make the most equitable determinations. Courts – particularly sitting in equity as here – also are far more adept at apprising new information and altering and adjusting a distribution scheme. For the same reason, it would be unwise for Congress to place strictures on how the money can be distributed. Such strictures will merely bind the Court’s ability to flexibly react to evidence that is presented by affected stakeholders through the fairness hearings and by other mechanisms.

11. There should be a severability clause providing for severing the *Cobell* settlement provisions from the rest of the legislation. There also should be a non-severability clause relating to the provisions within the IIM accounting provisions of the legislation.

Rationale

Severing the *Cobell* provisions from the rest of the legislation is needed to protect the legislative settlement of this case from being vitiated due to constitutional infirmities in other unrelated provisions. On the other hand, the provisions of the historical accounting settlement represent a finely balanced and integrated framework. The removal of one piece would change that balance and destroy the integrated compromises that the legislation was intended to reflect.

12. The following is an example of language that could be implemented to settle the historical accounting claim of the *Cobell* case:

“The Congress authorizes and directs the Department of Treasury to correct the account balances of the Individual Indian Trust held in Account 14X6039, in the aggregate amount of \$27.487 billion. This represents a fair and final settlement of the historical accounting claim in the case entitled Cobell v. Norton Civ. No. 96-1285(RCL) before the United States District Court of the District of Columbia. To the extent funds are needed for this purpose, the Congress authorizes and directs the use of the Claims Judgment Fund, 31

U.S.C. § 1301 et seq. to pay for the settlement of the lawsuit. The Federal District Court shall determine a fair and equitable distribution of the settlement proceeds to the trust beneficiaries in accordance with Rule 23 of the Federal Rules of Civil Procedure.”

13. Legislation should address the unique situation of the Osage Tribe, whose income from tribal trust assets are distributed to individuals through “headright” interests that belong not only to Osages, but Indians of other tribes, and non-Indians.

Rationale

The federal system for distributing income from Osage tribal trust assets requires the United States to deposit such funds first into tribal trust accounts, then distribute funds into IIM accounts for individuals Indians, both Osage and non-Osage each quarter. Non-Indians, including individuals, churches, corporations, and others, receive checks from the United States. The Osage Tribe receives a small portion of these funds for administration of Osage Reservation sub-surface mineral estate, an amount which must be negotiated and approved by the United States.

Reforming the Individual and Tribal Trust Systems

14. Legislation should affirm and clarify the specific standards for the administration of trust funds and transactions that involve those funds which prescribe what needs to be done, but not how to do it.

Rationale

Standards should be specific and clearly stated in legislation. By setting specific standards, the Department will know exactly what the expectations are in managing the trust. The legislation should make clear that the trust responsibility would not be diminished.

15. To the extent practicable, the legislation should establish resource-specific, generic standards where possible (e.g. sustained yield requirements for Indian timber).

Rationale

An example of this principle can be found in the National Indian Forest Resources Management Act and the American Indian Agricultural Resources Management Act. Both of these acts have “standards provisions” that are specific to these resources.

16. Legislation should clarify that fulfillment of fiduciary duties must be administered in accordance with applicable law, including tribal law.

Rationale

The National Indian Forest Resources Management Act and the American Indian Agricultural Resources Management Act both have provisions that expressly require the Secretary to abide by tribal laws in exercising his/her duties. A similar provision should be included in any trust reform/settlement bill.

17. The legislation shall codify the applicability of the following duties to the Indian Trust:

- a. Duty of Loyalty and Candor
- b. Duty to Keep and Render Accounts
- c. Duty to Exercise Reasonable Care and Skill
- d. Duty to Administer the Trust
- e. Duty not to Delegate (this does not negatively impact compacting or contracting.)
- f. Duty to Furnish Information
- g. Duty to Take & Keep Control
- h. Duty to Preserve the Trust Property
- i. Duty to Enforce Claims and Defend Actions
- j. Duty to Keep Trust Property Separate
- k. Duty with Respect to Bank Deposits
- l. Duty to Make Trust Property Productive
- m. Duty to Pay Income to Beneficiaries
- n. Duty to Deal Impartially with Beneficiaries
- o. Duty with Respect to Co-Trustees
- p. Duty with Respect to Persons Holding Power of Control

18. The legislation should state that in the absence of more specific statutory law or specific agreements between the trustee and the beneficiary, common law duties shall govern the administration of the trust.

Rationale

The law on trusts applies to the management of trust assets for Indian beneficiaries. The legislation should clearly state this so that the Department of Interior knows the scope of its duties in administering the trust for Indian beneficiaries.

19. The legislation should reaffirm that Indian beneficiaries have a cause of action in federal courts for breach of fiduciary duties and granting of equitable and legal relief.

Rationale

The Department of Interior is the trustee of lands, natural resources, and trust funds for tribes and individual Indians. These beneficiaries must have the right to redress if the trustee fails to meet its trust duties.

20. An independent Executive Branch entity is needed to provide oversight and enforcement authority for federal trust administration.

Rationale

The Department is engaged in trust management of assets and resources. Consequently, the Department is subject to strict fiduciary standards just as any private trustee is subject to such standards. Private trustees are subject to State and/or Federal regulation. The reasoning giving rise to government oversight of private trustees also applies to the Department in exercising its trust asset/resource management duties. There is an inherent conflict in self-regulation. Thus, an independent entity with oversight and enforcement authority over the Department of Interior is needed.

21. The independent Executive Branch entity should not diminish the inherent sovereign authority of tribal governments to make their own laws, nor should it interfere with tribal management of tribal land and other tribal resources where tribes assume these responsibilities through self-determination contracting or compacting.

Rationale

There is some concern that an independent entity could impact a tribe's ability to make their own laws and be governed by them. Specifically, tribes are concerned that an independent entity could impact a tribe's ability to enact land use laws. Management of trust assets/resources should be executed in conformance with tribal laws.

22. The legislation should prohibit the independent Executive Branch entity from engaging in any trust management functions.

Rationale

An historical function of the BIA is trust asset management. Any entity that oversees trust management cannot actively manage the trust as this would create a conflict of interest. An independent entity's functions must be limited to oversight and enforcement functions.

23. The legislation should require that the independent entity be separate from the Department of the Interior and not under its control.

Rationale

Again, a trustee cannot regulate itself. This also means that a sub-entity of the Department cannot regulate the Department. An independent regulatory entity necessarily means complete autonomy from the Department.

24. The legislation should charge the independent entity with ensuring that proper audits are conducted in accordance with generally accepted auditing standards. The independent entity should then be required to review the audits and ensure that corrective measures are taken.

Rationale

Audits ensure that trusts are properly managed and that accounts are accurate. When the audit reveals that the accounts are not accurate or that they have not been properly managed, then corrective measures can and should be taken. The trust managed by the Department of Interior should be subject to the same scrutiny as private trust which are subject to regulatory audits.

25. The legislation should require the independent entity to be governed by presidential appointees for five year terms from a list of nominated candidates.

Rationale

Five year terms signal that the appointee is not necessarily beholden to the President that appointed him/her.

26. Legislation should create the permanent position of the Deputy Secretary to be responsible for Indian Affairs including the management and administration of the Indian trust. The trust functions of BLM, OTFM, MMS, and other federal agencies with fiduciary responsibilities within Interior should also come under the jurisdiction of the Deputy Secretary.

Rationale

There has been widespread support among tribes and the Department on the creation of a Deputy Secretary of Interior for Indian Affairs. A similar proposal for a Deputy Secretary is included in S. 1459. The creation of this position would address a major issue that has been raised in every significant study of trust management at Interior, including the EDS Report and by the *Cobell* court: the lack of clear lines of authority and responsibility within the Department to ensure accountability for trust reform efforts by the various divisions of the Department of Interior. The two major entities responsible for trust assets and accounting are the Bureau of Indian Affairs and the Office of Special Trustee. The lines of authority, responsibility and communication between these two entities have been uncertain and at times have come into direct conflict. In addition, the Minerals Management Service, the Bureau of Land Management, and the U.S. Geological Service all play important roles in trust management, and various responsibilities are spread throughout the Office of Hearings and Appeals, the Office of American Indian Trust, and the Office of Historical Accounting. Nearly every agency in the Department of Interior has some significant trust responsibilities. At this time, there is no single executive within the Secretary's office who is permanently responsible for coordinating trust reform efforts across all of the relevant agencies. This absence has particularly hurt the progress of those issues that cut across agencies, such as the development of a system architecture that integrates trust funds accounting with the land

and asset management systems of the BIA, BLM and MMS (as required by the 1994 Act).

27. Legislation should require that tribal leaders be consulted with respect to the appointment of the Deputy Secretary and Indian preference shall apply to the Office of the Deputy Secretary.

Rationale

The appointment of a Deputy Secretary that knows Indian Country and its issues is critical to gaining the respect and confidence of tribal leaders. Tribal leaders know who is knowledgeable in regard to issues faced by Indian country and could provide necessary expertise and insight concerning potential candidates for the position.

Indian preference requirements have been intentionally avoided by the Office of the Special Trustee. Tribal leaders believe that OST has violated Indian preference by failing to abide by it in employment and contracting. Thus, the legislation should remove all doubt about the applicability of Indian preference to this office by expressly stating that it applies.

28. The legislation should expressly state that the Deputy Secretary shall have the primary duty to fulfill the fiduciary duties of the Secretary of the Interior and protect the interests of Indian beneficiaries including the authority to employ independent trust counsel to advise on ensuring compliance with trust duties.

Rationale

The legislation should expressly state this to make it clear that the Deputy Secretary's primary duty is to protect the trust of the Indian beneficiaries. Independent trust counsel is necessary so that the Deputy Secretary can consult counsel for the trust in regard to the Deputy Secretary's duty to the trust. Independent trust counsel would be especially helpful to advise the Deputy Secretary when he or she has competing duties that conflict with his or her trust duties.

29. The independent entity should assume the oversight responsibilities of the OST, and the Deputy Secretary should assume OST management and administrative responsibilities. Legislation should sunset the Office of the Special Trustee.

Rationale

The eventual elimination of OST is necessary for the efficient and productive management of trust assets. OST was never created to manage trust assets but to simply "oversee" the management of trust assets. Thus, the duty to manage trust assets should be transferred back under the Deputy Secretary and the independent entity would be charged with the responsibility of overseeing the management of the trust by the Deputy Secretary.

30. The legislation should not diminish the rights and responsibilities set forth in the Indian Self-Determination Act.

Rationale

Pursuant to the Indian Self-Determination Act, the United States cannot diminish its trust responsibilities to tribes and individual Indians. This includes tribal management of trust assets.

31. With respect to federal laws relating to use or management of tribal trust assets, legislation should permit and support the development of tribal, reservation-specific plans that provide specific standards for management of tribal trust resources.

Rationale

As mentioned above, the National Indian Forest Resources Management Act and the American Indian Agricultural Resources Management Act address tribal management of these resources. The modern federal policy of tribal self-determination supports tribes having greater authority to manage their tribal trust assets.

32. Legislation should protect the sovereign authorities and reserved rights of tribes to regulate the lands within their jurisdictions.

Rationale

In addition to federal laws that specifically provide for tribal management of trust assets, Congress should respect the sovereignty and reserved rights when considering the scope of legislation.

33. Legislation should support government-to-government agreements between a tribe and the United States for management of all trust resources within the tribe's jurisdiction, provided that the agreements ensure processes and remedies to protect the interests of allottees, including allottees of other tribes.

Rationale

Tribes should have expanded opportunities to manage assets in Self-Determination contracts and compacts.

34. Irrespective of what entity is administering individual Indian trust assets, the same duties and standards of conduct apply. Notwithstanding, tribes involved in self-determination or self-governance management and administration can utilize alternative means to carry out fiduciary duties so long as they meet the generally applicable standards.

Rationale

The rights of individual Indians to the highest standards of trust administration should not change, regardless of what entity is administering them.

35. Legislation should ensure that individual allottees can bring claims for failure to discharge fiduciary duties in managing individual trust assets.

Rationale

The management of individual trust assets must be enforceable in court where mismanagement of those assets occurs.

Indian Land Consolidation

36. Congress should enact new laws or amend existing ones that promote consolidation of fractionated interests in land as an element of a Cobell Settlement/Trust Reform legislative package.

Rationale

Highly fractionated lands are inherently difficult to manage. Thus, it is important for Congress to amend the Indian Land Consolidation Act or enact new legislation encouraging land consolidation.

37. For highly fractionated lands (greater than 50 owners), legislation should focus on expanding the voluntary buy back program and allow the Secretary to take into account other factors in determining land values such as avoided costs.

Rationale

In many instances, the Department of Interior spends more money administering accounts involving highly fractionated land than the appraised value of the land. Most owners would rather keep their lands rather than sell them for a small appraised value because there is a sentimental value in having ownership in the land. Thus, it would make sense for Congress to give the Secretary the discretion to offer more than fair market value for highly fractionated lands based on avoided costs or other factors as the owner may be more willing to sell these lands for a higher price. Data from the BIA land consolidation Office and from the Trust Asset Account Management System seems to indicate that a majority of ownership interests are concentrated in a relatively small portion of the allotments, particularly in the Great Plains, Rocky Mountain, and Northwest BIA Regions.

38. For less fractionated land, legislation should focus on providing mechanisms that encourage land consolidation, such as low interest loans for individuals to purchase fractionated land, and good ownership practices (i.e. family trusts).

Rationale

In order to discourage further fractionation of Indian trust lands, legislation should provide for incentives that allow individuals to purchase land from those individuals that have ownership interest in the same tracts of land.

39. Legislation should set forth enforceable rights and clear standards as to what constitutes adequate information so that landowners can give knowing and informed consent when making decisions whether to sell their lands.

Rationale

Informed consent is a key element to any voluntary program.

40. Legislation should have a process for repurchasing undivided fee interests to consolidate ownership of allotments into trust or restricted status.

Rationale

Undivided fee interests are currently excluded from being repurchased in the current land consolidation process. If a process and authority to repurchase is not established, the tribes may not own a 100% of a tract of land. Tribes and the federal, state and local governments will continue to have jurisdictional problems with the land if fee interests are not consolidated when undivided trust interests are consolidated.

41. The legislation should state that land consolidation payments will not diminish eligibility for federal benefits such as TANF, Social Security, Medicare/Medicaid and VA Benefits, and such payment should not be taxable.

Rationale

Native Americans are America's poorest people. This is especially true where the majority of highly fractionated lands are situated. Congress should not give money to these people with one hand and take it away with the other. A potential reduction in federal benefits will obviously be a disincentive for owners to sell their highly fractionated land. It would be in the federal government's best interest to exclude payments made to individuals in purchasing highly fractionated land from "eligibility formulas" used for federal benefits.

42. Legislation should provide a fair process for notifying persons whose whereabouts are unknown and protection of their interests including in the consolidation of lands.

Rationale

Congress should enact legislation that ensures that people that have IIM accounts or land are given adequate notice, consistent with due process, with regard to any action taken with respect to their account or land.

43. Congress should reconsider the use of liens on lands repurchased under ILCA programs in light of its administrative costs. Liens should be waived when the income from the land will not cover the purchase price.

Rationale

Liens on lands purchased under the “lien program” unduly cloud title to land that cannot produce enough revenue to service the underlying debt. In these instances, the federal government should forgive these debts and remove any liens on the land.

44. Legislation should promote tribal government efforts to repurchase fractionated lands that allow flexibility for cultural needs and priorities.

Rationale

Where some tribes seek to buy restricted fee allotments from individuals, the Department of Interior is requiring the tribes to allow the lands to go out of restriction then reapply to put them into trust for the tribe. This is nonsensical and discourages tribal purchases of allotted land which alleviates fractionation. Thus, purchases of trust or restricted status land should not change the status of the land and Congress should enact legislation to clarify this principle.

45. Legislation should promote tribal land ownership systems while preserving the rights of allottees that are willing to trade their land to a tribe or United States for an assignment or some form of an indefinite individual interest.

Rationale

There are tribal lands systems in place now, like at Eastern Cherokee, where all of the land held in trust by the United States on the reservation is held in trust by the tribe. Individual Indians can possess tribal land through assignments made by the tribe. Any leasehold interest created on these assignments can be mortgaged. These assignments are not subject to term limitations and are alienable to other tribal members. The purpose of keeping the land in trust through the tribe is to retain the benefits associated with trust land. It would be in the federal government’s interest to promote tribal land ownership systems because it would alleviate, if not eradicate, the land fractionation problems facing the federal government today.

46. Congress should ensure adequate funding and staffing for efficient land consolidation.

Rationale

Legislation authorizing and promoting land consolidation is meaningless without the funding needed to purchase the land or the resources necessary to do the needed appraisals, title and probate work. Furthermore, more resources are needed to ensure enforcement of land use laws and to develop land consolidation plans.

47. The appraisal system should be fixed in any legislation. Problems like the lack of timeliness of appraisals, the significant backlog, the improper valuation, and the overall transfer of fractional interest lands including voluntary buyback should be addressed. The system should also be consolidated under the Bureau of Indian Affairs.

Rationale

Appraisals are not conducted at the agency level and they take too long to obtain thereby delaying consolidation of fractionated land. Additionally, income based appraisals are consistently inaccurate.

Individual Indian Resource Mismanagement Claims

48. Congress should provide a fair offer to individual Indians for decades of federal mismanagement of their trust resources.

Rationale

Congress has failed to provide adequate oversight of its trustee-delegates and retained only congressional oversight. Congress should provide an avenue for compensation for individuals as it has for tribes.

49. Congress should treat the federal mismanagement of individual Indian resources as a matter of national interest as it has the savings and loan scandal. Congress cannot leave the individual allottee to the mercy of the federal bureaucrats as there is a documented history of widespread, systematic, and continuing mismanagement of Indian resources.

Rationale

Lands were taken from individual Indians by “Order Transferring Inherited Interest” and other underhanded ways. It has kept the poorest Americans from economic advancement by allowing or causing the loss or theft of individual trust resources and bureaucratic expropriation of individual lands.

50. Congress should not involuntarily terminate the rights of individuals to seek redress for federal mismanagement of individual trust resources.

Rationale

Individual allottees should not have settlement of their claims imposed upon them.