
The Perils of Indian Land “Buy Back”

Gabriel S. Galanda

2nd Annual Tribal Lands Conference

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March 1st Deadline Nearing for Public Comment on 1.9 Billion Interior Plan to Buy Indian Lands

FEBRUARY 3, 2012 BY [DAVID BARTECCHI](#) [1 COMMENT](#)

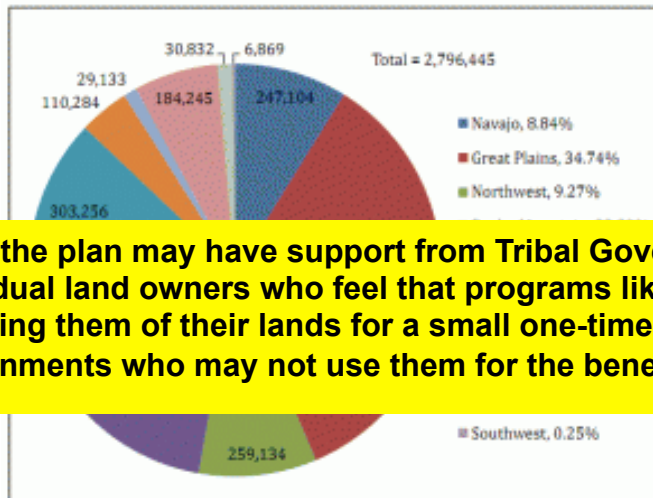


Figure 1. Total Number of Aggregated Fractional Interests by Region (As of 10/31/2011)

Recently, the U.S. Department of Interior released its [draft proposal](#) for utilizing the \$1.9 billion from the Cobell settlement allocated for consolidating Indian Lands. According to John Dossett, the general counsel for the Native Congress of American Indians, cited in an [article](#) by

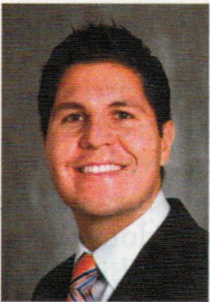
While the plan may have support from Tribal Governments, it does not address the concerns of many individual land owners who feel that programs like this take advantage of people's desperation, forever divesting them of their lands for a small one-time payment, and transferring them to the control of Tribal Governments who may not use them for the benefit of their people as a whole.

implementing and administering the land consolidation program through cooperative agreements, which are addressed in the draft plan. While the plan may have support from Tribal Governments, it does not address the concerns of many individual land owners who feel that

programs like this take advantage of people's desperation, forever divesting them of their lands for a small one-time payment, and transferring them to the control of Tribal Governments who may not use them for the benefit of their people as a whole. Of course, the impact of transferring large amounts of land from individual to tribal management will depend upon the particular tribe.

A 'Disaster' in the Making

BY GABRIEL S. GALANDA



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Interior has it all wrong. They are Band-Aiding a malignant Indian injury. In time, what they currently propose will not alleviate but instead exacerbate the harm inflicted upon Indians since 1887. Tribal land acquisition may be part of the remedy to that historical harm, in the instance of willing Indian sellers—of informed consent. Forcing the sale of Indians' lands, however, is in no way good for what ails Indians. A more appropriate

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The Indian Land Consolidation Plot Thickens

GABRIEL S. GALANDA | 2/23/13

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When Bureau of Indian Affairs Director Mike Black was pressed, he was forced to admit that the buy back program is specifically designed to bring tribes into at least a controlling 51% interest in fractionated allotted or restricted lands – at which time a tribe could then, on its own volition and with its own funding, force the sale of the remaining 49% or other minority interest. Make no mistake about it: while Interior’s plan now disclaims that it will facilitate forced sales under 25 U.S.C. 2204, the buy back program *will* catalyze controversial intra---tribal forced sales.

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Indian land consolidation effort, which they disclaimed as having inherited from the *Cobell* parties. What became obvious from the session is how difficult, if not impossible, it will be to carry out the agency’s fractionated Indian land buy back program.

Interior's Indian Land Buy-Back Plan: More Sketchy By the Day

First, “the program will exclude reservations east of the Mississippi and in Alaska” according to Interior's appraisers. In addition, Western states with high concentrations of Indian lands, most notably California, are not on Interior's priority list for federal buy back funding.

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Federal Assumptions That Enfeeble Native America

DAVID WILKINS | 7/18/12

A second “controlling assumption” has been the presumption that the solution to indigenous problems is only a matter of a simple adjustment of pre-existing programs and policies. Rarely do change agents investigate the ideological or

fact that is enshrined in the U.S. Constitution’s Commerce Clause and in the nearly 400 ratified treaties between their nations and the U.S.

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Where Are We Going In the Next Hour?

- Oh the places we'll go:
 - *Cobell*
 - What does it all mean, especially prospectively?
 - *Patchak*
 - How is this decision the outlier in any forced “buy back”?
 - The Fifth Amendment of the U.S. Constitution
 - Got just compensation under ILCA this time?
 - United Nations Declaration on the Rights of Indigenous Peoples
 - Does the Buy Back Program ripen domestic enforcement of the Declaration against the U.S.?

Why Hasn't Interior Pursued Proven Alternatives?

- The Problem:
 - Dividing a single lease payment among “dozens to more than 1,000 individual owners of a single allotment.” *Cobell v. Norton*, 283 F.Supp. 2d. 66, 182 (D.D.C. 2003).
 - Thousands of accounts have “little or no activity” and “balances less than \$50.” H.R. Rep. No. 102-499, at 28.
 - Fractionation has “caused enormous administrative difficulties for the government.” *Cobell v. Salazar*, 573 F.3d 808, 814 (D.C. Cir. 2009).
 - Non-Indians own undivided interests in Indian lands, held in federal trust status.
- The United States caused this problem, in 1887, and ever since.
- The most pervasive problem: Fear of further federal liability for failing to act in accordance with “the most exacting fiduciary standard.” *Seminole, infra*.
- Unless all stakeholders are completely open and honest about the problem, there will never be a legitimate fix or solution.
- The Buy Back Program is not founded on openness or transparency.

Why Hasn't Interior Pursued Proven Alternatives?

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 Federal Assumptions That Enfeeble Native America
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Native American people and the distinctive nations they belong to exist in a paradoxical world. They are the original nations of North America, a fact that is enshrined in the **U.S. Constitution's Commerce Clause** and in the nearly 400 ratified treaties between their nations and the U.S.

Why Hasn't Interior Pursued Proven Alternatives?

- Professor Wilkins' fundamental criticisms of the Buy Back Program:
 - Interior's plan is premised on the presumption that the solution "to indigenous problems is only a matter of a simple adjustment of pre-existing programs and policies."
 - Indeed: "Rarely do change agents investigate the ideological or structural underpinnings of federal programs, laws, doctrines—believing instead that the basic federal structure and legal arrangements are sound and that all that is needed is a minor tweaking of the system or its component parts."
 - "Despite reams of evidence and several court opinions that the [BIA and] Interior had mismanaged Indian trust account funds for well over a century, the Bureau, the major culprit in the mismanagement, was entrusted by Congress with the authority to use \$1.9 billion of the settlement package to devise a land consolidation plan to address the problems that the Bureau itself had spawned and perpetuated."

Why Hasn't Interior Pursued Proven Alternatives?

- To illustrate these constructive criticisms of the Buy Back Program:
- Interior has given short shrift the most obvious solution to stemming further fractionation; to solving its own problem: Indian estate planning.
- The Department admitted in 2012 that through estate planning, “some allotments today are still owned by single individuals”
 - Acknowledged many suggestions “that the Department place a priority on estate planning, drafting of wills, and probate, stating that this was an opportunity to efficiently purchase interests before they were further fractionated.”
- Indeed, audit findings from a 2005 BIA Indian estate planning pilot program concluded that 83.5% of the time, Indian will writing reduces fractionation.
- Yet Interior myopically pursues “buy back” as the only solution to the horrendous fractionation problem *caused by the U.S.* in 1887. Why?

Why Does Interior Still Profess that the Program is “Strictly Voluntary”?

- In 2012, the Department’s first stated its strategy to “identify tracts with relatively low fractionation and a few ‘large’ interest owners, the acquisition of whose interests **could bring a tribe to a controlling level of interest in that tract** with a minimal number of acquisitions.”
- “Controlling level of interest” refers to the Indian Land Consolidation Act, which allows tribes that acquire a simple 51% majority interest in allotted lands to force a sale of minority owners’ land interests. 25 U.S.C. 2204(a).
- In February 2013, Interior disclaimed: “There will be NO forced sales.”
- Again, though, when Mike Black was pressed, **he admitted that once Interior brings a tribe into a controlling 51% interest, the tribe could then force the sale of the remaining 49% or other minority interest(s).**

Why Does Interior Still Profess that the Program is “Strictly Voluntary”?

- By late 2013, Interior continued to feign that “the Buy-Back Program is strictly voluntary.”
- But now buried in the back of its Buy Back Plan is this cryptic disclaimer:
 - “Under the March 2011 terms of the Settlement and the Claims Resolution Act of 2010, all sales are February voluntary . . . **The Department has no control over the prerogatives of sovereign tribal nations to exercise whatever rights they may have regarding the purchase of land 2011 outside of the confines of the Buy-Back Program**” – i.e. forced sale rights per 2204(a).
- Exemplifies by the Buy Back Program is not open and honest enough, and why it is therefore doomed to fail.
- Make no mistake about it: while Interior’s plan disclaims any facilitation of forced sales under 25 U.S.C. 2204(a), the \$1.55 Billion in “buy back” monies *will* catalyze controversial intra-tribal forced sales.

What Will Interior Do to Protect Members Against Forced Sales?

- The United States owes a trust obligation to tribal member landowners.
- In *Seminole Nation v. United States*, 316 U.S. 286 (1942), the Supreme Court made clear that the Federal Government, in its dealings with Indians, is charged with “moral obligations of the highest responsibility and trust” and should be “judged by the most exacting fiduciary standard.”
- So although Interior may have “no control over the prerogatives of sovereign tribal nations” in terms of forcing the sale of their members land,
 - if Interior knows forced sales are already happening (they are), and
 - if Interior knows that a forced sale could happen to a landowner if they help the tribe acquire a controlling level of ownership interest in her land,
- is Interior duty bound and morally obliged to protect and defend the tribal member from being subject to the forced “buy back”?
- Yes, Interior is legally, ethically and morally bound to protect the landowner.

What Will Interior Do to Protect Members Against Forced Sales?

- Article 10 to the United Nations Declaration :
 - **Indigenous peoples shall not be forcibly removed from their lands or territories.** No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
- *See also* Article 1 – indigenous individuals “have the right to full enjoyment...of all human rights and fundamental freedoms as recognized in...international human rights law”
- *See also* Article 11 of the Declaration of the Rights of Man and of the Citizen – “Property being an inviolable and sacred right, no one can be deprived of”
- At least theoretically, 25 U.S.C. 2204(a), and the Buy Back Program insofar as it aids or abets the forced sale of tribal members’ lands, violates international law.

What Will Tribes Do With Unclear Title Long After a Forced Sale?

- A forced sale would result in a trust-to-trust transfer of beneficial title, from the tribal member-seller to the Tribe-buyer.
- Thanks to the current Supreme Court, the statute of limitations on challenges to trust acquisitions was extended **from 30 days to six years**. *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 U.S. 2199 (U.S. 2012).
- Does this Court’s holding apply to Part 152 transactions?
- After *Patchak*, Fitch Ratings noted that raising capital for Indian land projects was “more difficult/expensive, as investors are likely to have heightened concern about potential challenges regarding land-into-trust decisions.”
 - *Patchak* will “embolden additional parties to step forward to challenge land-into-trust decisions that took place within the last six years”
- Can a Tribe-buyer who forces the sale of its member’s land withstand six years of legal, financial and intra-tribal political uncertainty?
- Will the United States just stand back and watch the escapade unfold?

How Will Interior Honor Its Trust Duty to Both Tribes and Members?

- The United States also owes a trust obligation to tribal government; “moral obligations of the highest responsibility and trust . . . “judged by the most exacting fiduciary standard.” *Seminole*.
- BIA personnel will tell you that it is unwritten agency policy/protocol to side with the Tribe an intra-tribal matter involving the Tribe.
- But here, on the issue of FMV alone, there is an unavoidable conflict of interest.
 - Even a willing member-seller will want the purchase price to be as high as possible, while both the Tribe-buyer and Interior will want the price to be lower, in the interest of spreading as far as possible the \$1.55 billion (net of Interior’s 15% cut) allocated for land buy back.
- It has been recommended that Interior devise a buy back conflict of interest policy, especially for BIA Superintendents to follow. But Interior has not.
- Still, it can no longer be business as usual for Bureau career employees who routinely align with tribal governments in tribe-member land transactions.

How Will Interior Ensure Informed Consent By Tribal Members?

- “Interior may acquire land from individual Indian owners to consolidate fractional ownership interests and thereby ‘lessen the number of owners.’” *Cobell v. Norton*, 225 F.R.D. 41, 44 (D.D.C. 2004).
- The United States’ fiduciary responsibility requires that the “individual Indian owner of trust lands . . . give **truly informed consent** to the sale of trust corpus” before any sale is approved. *Id.*, at 46.
- Sales of allotted land interests are governed by provisions set out in 25 C.F.R. § 152. “The common feature of all these kinds of . . . sales is that **they require communication** between individual Indian trust-land owners and agents of Interior.” *Id.*, 45.
- “[I]ndividual Indians, for example, should not have to decide whether to sell their land without access to a full and accurate accounting, appraisal, and other **relevant information.**” *Id.* at 52.

How Will Interior Ensure Informed Consent By Tribal Members?

- The fiduciary duty owed to individual Indians includes consultation, i.e., “**communication by Indian beneficiaries of their desires** to the federal trustees who make ultimate determinations about what happens with the lands Indians occupy.” Derek C. Haskew, 24 AM. IND. L. REV. 21, 31 (2000).
- This duty is triggered when an agency decision impacts the “value, use, or enjoyment” of Indian lands. DEP’T OF THE INTERIOR, PROTECTION OF INDIAN TRUST RESOURCES PROCEDURES MANUAL 13 (1996).
- Interior proposes to mail out mass sale offers to undivided interest owners.
- Mass mailings are **not** conducive to (a) providing all relevant information to, (b) properly communicating/consulting with, or (c) obtaining informed consent from, tribal members. Or having them communicate their desires.
- Or to fulfilling “moral obligations of the highest responsibility and trust.”

How Will Interior Ensure Informed Consent By Tribal Members?

- Article 10 to the United Nations Declaration:
 - ...Indigenous peoples shall not be forcibly removed from their lands or territories. **No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned...**
- *Cobell* mirrors Article 10: “individual Indian owner of trust lands [must] give **truly informed consent** to the sale of trust corpus” before any sale is approved.
- The Buy Back Program insofar as it causes the sale of tribal members’ lands without free, prior and informed consent, violates international law.
- Perhaps “buy back” challenges are conducive to domestic enforcement of Article 10.
 - Causes of action allowed against the United States under Section 702 of the federal APA, which waives the United States’ sovereign immunity, **include “common law claims based on the present-day law of nations.”** *U.S. v. Dire*, 680 F.3d 446 (4th Cir. 2012).
 - Consider also claims against tribal officials in tribal court for violation of tribal law.
 - Tribal Constitution – Taking; Equal Protection; Due Process; Tribal common law, custom, tradition.
 - Can tribal officials be sued to for prospective injunctive relief to enjoin force sale efforts? *See Ex parte Young*, 209 U.S. 123 (1908), as a matter of tribal common law or code.

How Will Interior Ensure Just Compensation?

- The Fifth Amendment to the United States: “nor shall any private property be taken for public use, without just compensation.”
- The Supreme Court has already struck down Interior’s Indian land consolidation efforts, once, under the Fifth Amendment. *Hodel v. Irving*, 481 U.S. 704 (1987) (intestate-escheat provision to ILCA struck down).
- Give the agency’s admitted rush to expend \$1.9 Billion, Interior proposes:
 - Mass appraisal
 - Categorical exemption from NEPA review
 - Single mass purchase offers, rather than an open bidding process
 - A “Tribe’s right . . . does not equate to a blanket right to purchase without competition. While the Tribe may indeed have the opportunity to purchase trust land at appraised fair market value, this is only true once the sale is advertised, an open bidding process is conducted, and no other offers for the purchase price are made.” *Middleton Co. v. Salazar* (W.D. Wash. 2009).
- Not only does haste make waste, but any promise of just compensation for tribal member landowners seems dubious.

How Will Interior Ensure Just Compensation?

- Article 10 to the United Nations Declaration:
 - ...**No relocation shall take place without** the free, prior and informed consent of the indigenous peoples concerned and after **agreement on just and fair compensation** and, where possible, with the option of return.
- Article 11 of the Declaration of the Rights of Man:
 - Property being an inviolable and sacred right, no one can be deprived of it, unless demanded by public necessity, legally constituted, explicitly demands it, and under the condition of a just and prior indemnity.
- 25 U.S.C. 2204(a), and the Buy Back Program, insofar as it causes the sale of tribal members' lands without just compensation, violates both federal and international law.
- Again, in addition to Fifth Amendment claims against the U.S., consider domestic enforcement of “common law claims based on the present-day law of nations.” *Dire*.
- Or again, tribal enforcement of tribal law, anchored by international human rights norms.

Will Interior Confer the Option of Returning the Lands?

- What if the Tribe who forces the sale of its member's or members' land does not utilize the lands "for the benefit of their people as a whole?" What if it bears out that the land was forcibly sold for a untoward tribal purpose?
- Article 10 to the United Nations Declaration:
 - Indigenous peoples shall not be forcibly removed from their lands or territories. No **relocation shall take place** without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, **where possible, with the option of return.**
- The Buy Back Program includes no mechanism for return of improperly sold lands to tribal members, in violation of international law.

How Can Interior Exclude Large Swaths of Indian Country?

- Interior initially published a “Top 40” list of tribes, stating an intent to focus 90% of \$1.55 Billion allocated for fractionated land acquisition – meaning **\$1.39 Billion** – on 40 reservations.
 - 90% of the “purchasable fractionated interests” are located on 40 reservations.
- As to the other 110 reservations with purchasable fractionated interests, they would be collectively allocated the remaining 10%, or merely **\$163 million**.
 - Coeur d’Alene Tribal Chairman Chief Allen: “like dogs fighting for scraps”
 - Umatilla Tribal Leader: “another federal effort of divide and conquer”
 - Prof. Wilkins: the BIA, “the major culprit in the mismanagement, was entrusted... to address the problems that the Bureau itself had spawned and perpetuated”
- The rest of Indian Country, as many as 415 tribes, are not listed for federal buy back program funding – despite the fact that the funding compensates those tribes’ *members* (the *Cobell* plaintiffs) for mismanagement of *their* lands.

How Can Interior Exclude Large Swaths of Indian Country?

- More recently, Interior’s appraisers disclosed that **“the program will exclude reservations east of the Mississippi and in Alaska.”**
- Even “west of the Mississippi,” entire states with high concentrations of Indian lands—most notably California—are even not on Interior’s priority list for federal buy back funding.
- Interior was quick to retract their appraiser’s admission but the fact remains that a very small number of the 415 tribes with fractionated land, will reap the benefit of the Buy Back Program.
- To illustrate, of all the tribes in Arizona, only three Arizona tribes, are prioritized for buy back funding; consider Navajo Nation for example.

How Can Interior Exclude Large Swaths of Indian Country?

Land Area Name (Federally Recognized Tribe with Jurisdiction)	BIA Region	BIA Agency	Land Area Code(s)	Tract Data						Individuals & Interests											
				Number of Tracts Held In Trust	Number of Fractionated Tracts Containing Purchasable Interests	Number of Highly Fractionated Tracts (50-99 owners who interest >10%; 100+ owners (25 USC 2201(6)))	Number of Acres Associated with Fractionated Tracts Containing Purchasable Interests	Level of Tribal Ownership Interest in Fractionated Tracts Containing Purchasable		Number of Purchasable Fractional Interests	Number of <2% Interests (25 USC 2212(b)(2) priority)	Number of <5% Interests (AIPRA Intestate Descent Rule 25 USC 2006)	Number of Unique Individuals owning Fractional Interests	Whereabouts Unknown			Number of Individuals owning Fractional Interests who are under Legal Disability (Non-Comp, Minor, etc...)	Number of Individuals owning Fractional Interests over 65 Years of Age			
								< 50 %	> = 50 %					Number of Individuals owning Fractional Interests who are WAU	Number of Fractional Interests owned by WAUs	Number of Fractionated Tracts w/ at least one WAU owner					
Confederated Tribes of the Colville Reservation, Washington (101)	Northwest	Colville (03)	101	6,332	2,041	106	165,512	1,423	618	36,122	4,673	5,148	5,988	529	1,708	689	134	1,095			
101	Colorado River Indian Tribe of the Colorado River Indian Reservation, Arizona and California (603)			Western		Colorado River (51)		603	896	528											
102	Fort Mojave Indian Tribe of Arizona California & Nevada (604)			Western		Colorado River (51)		604	28	2											
103	Hopi Tribe of Arizona (608)			Western		Hopi (65)		608	25	11											
104	Tohono O'odham Nation of Arizona (610)			Western		Papago (54)		611	312	281											
105	Gila River Indian Community of the Gila River Indian Reservation, Arizona (614)			Western		Pima (57)		614	5,644	4,691											
106	Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona (615)			Western		Salt River (55)		615	1,830	1,409											
107	California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California (628)			Pacific		Central California (51)		628	1	1											
108	Habematolel Pomo of Upper Lake, California (formerly the Upper Lake Band of Pomo Indians of			Pacific		Central California (51)		636	9	4											
20	[PREVIOUSLY LISTED AS THE CONFEDERATED TRIBES OF THE Siletz Reservation] (142)			Northwest	Siletz (01)	142	04	1	0	47	1	0	0	0	0	0	0	0	0		
21	Confederated Tribes of the Umatilla Reservation, Oregon (143)			Northwest	Umatilla (07)	143	1,538	1,015	43	66,945	972	43	18,848	2,305	2,681	3,131	108	282	162	49	571

How Can Interior Exclude Large Swaths of Indian Country?

Land Area Name (Federally Recognized Tribe with Jurisdiction)	BIA Region	BIA Agency	Land Area Code(s)	Tract Data							Individuals & Interests							
				Number of Tracts Held In Trust	Number of Fractionated Tracts Containing Purchasable Interests	Number of Highly Fractionated Tracts [50-99 owners who interest >10%; 100+ owners (25 USC 2201(6))]	Number of Acres Associated with Fractionated Tracts Containing Purchasable Interests	Level of Tribal Ownership Interest In Fractionated Tracts Containing Purchasable		Number of Purchasable Fractional Interests	Number of <2% Interests [25 USC 2212(b)(2) priority]	Number of <5% Interests [AIPRA Interstate Descent Rule 25 USC 2006]	Number of Unique Individuals owning Fractional Interests	Whereabouts Unknown			Number of Individuals owning Fractional Interests who are under Legal Disability (Non-Comp, Minor, etc...)	Number of Individuals owning Fractional Interests over 65 Years of Age
								< 50 %	> = 50 %					Number of Individuals owning Fractional Interests who are WAU	Number of Fractional Interests owned by WAUs	Number of Fractionated Tracts w/ at least one WAU owner		
1 Confederated Tribes of the Colville Reservation, Washington (101)	Northwest	Colville (03)	101	6,332	2,041	106	165,512	1,423	618	36,122	4,673	5,148	5,988	529	1,708	689	134	1,095
2 Spokane Tribe of the Spokane Reservation, Washington (102)	Northwest	Spokane (12)	102	1,277	389	21	24,159	372	17	8,771	1,675	1,891	2,154	140	471	163	53	374
3 Kalispeel Indian Community of the Kalispell Reservation, Washington (103)	Northwest	Spokane (12)	103	166	75	3	2,336	54	21	1,035	165	208	241	15	56	30	5	50
4	122	Navajo Nation, Arizona, New Mexico & Utah (780)	Southwest	Ramah (75)	722	430	222											
5	123	Navajo Nation, Arizona, New Mexico & Utah (780)	Navajo	Navajo (00)	723	133	104											
6	124	Navajo Nation, Arizona, New Mexico & Utah (780)	Navajo	Navajo (00)	724	75	46											
7	125	Navajo Nation, Arizona, New Mexico & Utah (780)	Navajo	Navajo (00)	790	1,281	508											
8	126	Navajo Nation, Arizona, New Mexico & Utah (780)	Navajo	Navajo (00)	791	4,287	3,443											
9	127	Navajo Nation, Arizona, New Mexico & Utah (780)	Navajo	Navajo (00)	792	177	42											
10																		
11 Washington (115)																		
12 Quileute Tribe of the Quileute Reservation, Washington (116)	Northwest	Olympic Peninsula (06)	116	65	30	3	5	30	0	562	157	223	303	8	10	9	6	55
13 Quinault Tribe of the Quinault Reservation, Washington (117)	Northwest	Taholah (17)	117	2,103	1,421	122	103,823	1,365	56	36,416	3,496	3,302	4,434	320	1,327	515	46	984
14 Sault-Suiattle Indian Tribe of Washington (119)	Northwest	Puget Sound (10)	119	66	33	8	1,173	32	1	1,598	424	466	512	45	113	24	10	72
15 Skokomish Indian Tribe of the Skokomish Reservation, Washington (120)	Northwest	Olympic Peninsula (06)	120	130	81	14	2,528	81	0	3,528	893	999	1,047	61	181	55	4	239
16 Squaxin Island Tribe of the Squaxin Island Reservation, Washington (121)	Northwest	Olympic Peninsula (06)	121	48	20	6	1,014	17	3	1,395	714	741	756	55	91	17	6	137
17 Swinomish Indians of the Swinomish Reservation, Washington (122)	Northwest	Puget Sound (10)	122	163	78	13	3,842	77	1	3,181	1,032	1,119	1,168	105	208	45	25	171
18 Tulalip Tribes of the Tulalip Reservation, Washington (123)	Northwest	Puget Sound (10)	123	644	147	2	3,374	144	3	1,855	553	695	937	114	176	66	24	141
19 Confederated Tribes and Bands of the Yakama Nation, Washington (124)	Northwest	Yakama (11)	124	6,426	2,205	176	175,897	1,835	370	54,015	4,074	4,411	4,888	200	845	521	57	833
20 Confederated Tribes of the Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) (142)	Northwest	Siletz (01)	142	62	1	0	47	1	0	3	0	0	3	0	0	0	0	1
21 Confederated Tribes of the Umatilla Reservation, Oregon (143)	Northwest	Umatilla (07)	143	1,538	1,015	43	66,945	972	43	18,848	2,305	2,681	3,131	108	282	162	49	571

How Can Interior Exclude Large Swaths of Indian Country?

Table 1 – For Illustrative Purposes – Subject to Change⁷

Land Area Name (and code(s))	BIA Region	Number of Fractionated Tracts	Associated Purchasable Acres	Number of Purchasable Fractional Interests	Weighted Proportion	Estimated Initial Purchase Ceiling (for
Pine Ridge (344)	Great Plains	6,028	1,201,414	195,862	8.07%	\$125,427,372
Standing Rock (302)	Great Plains	6,304	766,680	227,133	7.16%	\$111,361,180
Blackfeet (201)	Rocky Mountain	4,831	898,086	191,278	6.65%	\$103,353,167
Navajo (722, 723, 724, 790, 791, 792)	Navajo, Southwest	4,370	687,504	259,319	6.59%	\$102,452,432
Cheyenne River (340)	Great Plains	4,066	736,807	65,655	4.47%	\$69,491,699
Rosebud (345)	Great Plains	3,118	568,870	92,324	3.91%	\$60,773,153
Gila River (614)	Western	4,707	84,157	173,867	3.88%	\$60,276,434
Fort Berthold (301)	Great Plains	3,249	469,629	91,707	3.64%	\$56,589,204
Fort Belknap (204)	Rocky Mountain	3,024	571,758	57,186	3.49%	\$54,285,469
Wind River (280)	Rocky Mountain	2,539	173,495	137,200	2.97%	\$46,256,563

GALANDA BROADMAN

An Indian Country Law Firm

Is Interior Ready for Years or Decades More of Trust Litigation?

- Mark my words: Tribal members *will not* go down—i.e., be forcibly removed from their ancestral lands—without a fight.
- David *will* face off against Goliath (their own Tribe and/or the United States and its DOJ ENRD); there *will* be blood.
- *Patchak* might allow up to six years for the federal legal fight to even *begin*.
- “Over the past thirteen years, the parties have tried to settle this case many, many times, each time unsuccessfully,” said Eric Holder in December 2012. “But today we turn the page. This settlement is fair to the plaintiffs, responsible for the United States, and provides a path forward for the future.”
- The *Cobell* settlement is proving unfair to the Indians plaintiffs and typically irresponsible for the United States, and it sets regressive path.
- Brace for the chapter in federal Indian history that was *Cobell* to be reopened—and retold. It will not be a story for the faint of heart.

In Sum

- Buyers, and sellers, beware
- If \$1.9 Billion seems too good to be true, it probably is.

Thank You

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