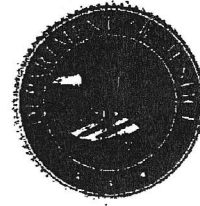




MAR 01 2007



The Honorable Byron Dorgan  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter and continued interest in legislation to address Indian land trusts. The Administration strongly supports a comprehensive legislative package designed to strengthen the partnership between the Federal Government and American Indians by moving from a litigation-oriented relationship to one of economic prosperity, empowerment, and self-reliance for tribes and individual Indians.

To achieve these goals, the Administration is willing to invest up to \$7 billion, over a ten year period, as explained in the enclosed summary. A legislative package valued at that amount would need to take the next step, over an appropriate term of years, in true self-governance and self-determination, by ensuring trust lands are managed by Indian owners and tribes who have full authority, responsibility, and liability for their decisions. Legislation that embraces an Indian owner-managed trust relationship will permit Indian landowners and tribes to exercise their rights to the full beneficial use and enjoyment of their property interests.

Our commitment to implement a successful Indian owner-managed trust relationship includes legislative mechanisms and priority funding to consolidate the millions of fractionated interests that have severely undermined the economic viability of many Indian allotments. In the short term, this land interest consolidation initiative would result in a substitution of trust assets – Indians will receive cash in place of the mostly unmarketable fractionated land interests held by many minor interest owners. In the long term, we believe that the consolidation of fractionated land interests will significantly increase the value of the trust estate, enable increased opportunity for economic development, and ensure Indian landowners are able to make land use decisions.


As noted in the enclosed summary, settlement legislation requires provisions and funding to settle all existing and potential individual and tribal claims for trust accounting, cash and land mismanagement, and other related claims, along with the resolution of other related matters (e.g., trust reform, IT security, etc.) that otherwise burden the lands at issue and permit recurrence of such highly disruptive litigation. Because it will enhance the value of these lands to their Indian owners, we expect that the package would create benefits greatly exceeding the dollars to be expended.

Over the past few months, we have benefited greatly from the discussions we have had with the majority and minority staff on the Senate Committee on Indian Affairs. We look forward to continuing our work with Congress to help usher in a new era of independence and prosperity for Indian landowners and tribes and a future relationship with Indian Country that reflects our commitments to self-governance and self-determination.

Please let us know how we can assist you, Vice-Chairman Thomas, and Chairman Rahall and Ranking Member Young of the House Natural Resources Committee, with this important legislative initiative. Similar letters have been addressed to them and Senator McCain.


Again, thank you for your continued support on this matter.

The Office of Management and Budget advises that it does not object to enactment of legislation that is consistent with this letter and the enclosed summary entitled "Key Facets of Acceptable Indian Trust Reform and Settlement Legislation."



DIRK KEMPTHORNE  
Secretary of the Interior

Sincerely,



ALBERTO R. GONZALES  
Attorney General

Enclosure

## **KEY FACETS OF ACCEPTABLE INDIAN TRUST REFORM AND SETTLEMENT LEGISLATION**

The Administration will support Congressional efforts to adopt legislation that would reform and improve major components of Title 25 of the U.S. Code dealing with Indian land trusts. The Administration is prepared to consider a multi-billion dollar expenditure for this purpose if said legislation (as drafted in bill language, not merely outlined in a White Paper) ends all actual and potential litigation disputes associated with those land trusts and is constructed to achieve the following:

### **[Land Empowerment Reforms]**

- Requires conversion of all 128,000 individual Indian allotments, once fractionated interests are reasonably consolidated, into Indian-owner-managed trust status, within no more than 10 years.
- Requires mechanisms and guaranteed priority of all necessary funding (within the overall settlement cap) to consolidate the 3.6 million fractionated interests to the degree necessary to enable individual Indians to gain the beneficial use and enjoyment of their property rights within an owner-managed trust, using both voluntary mechanisms and mandatory authority.
- Includes incentives to enable individual Indian land owners to undertake the duties and responsibilities of property management, and to encourage voluntary conversion to Indian-owner-managed trusts sooner than 10 years.

### **[Liability Elimination and Positive Future Relationship]**

- Relieves the government of all historical accounting obligations, and deems account balances accurate as of the date of enactment of legislation. Settles all cash mismanagement claims that have been or could be brought by individual Indians, and all land-based mismanagement claims that have been or could be brought by individual Indians (also including disputes about right of way, title recording, trespass, or any others related to land).
- Provides relief from all other aspects of the *Cobell* litigation, including limits on attorney fees (no common fund recovery, hourly fees only and with requisite documentation proof, aggregate cap).
- Precludes the government's future liability exposure on any land which is left under government title. Restricts government liability during transition period. Includes provisions to prevent future mismanagement liability claims for any residual responsibilities that the government would continue to provide (close loopholes tightly). Mechanisms can permit the raising and correction of errors, but without assigning liability or damages to the government. Also requires clear statute of limitations, and bar on prejudgment interest.

### **[Tribes]**

***[Note: Resolution of Tribal litigation claims could be deferred, but value of the settlement will change substantially with the inclusion or exclusion of Tribal exposures]***

- Requires conversion of all Tribal trust lands into Tribal-managed trust status within 10 years.
- Ends all tribal historical accounting claims, cash mismanagement, and land mismanagement issues in similar fashion as for individual claims.
- Includes provisions to prevent future mismanagement liability claims for any residual responsibilities that the government would continue to provide (close loopholes tightly).

### **[General]**

- No lump-sum funding. Land consolidation and then settlement administration payouts to be drawn down as needed from U.S. Treasury (i.e., no interest). Funding established up front may be spread over multiple years.
- Aim for legislation enactment in calendar year 2007, but recognize that a complex settlement cannot be rushed.