



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

AUG 10 2012

Honorable Tom Cole
House of Representatives
Washington, DC 20515

Dear Representative Cole:

Thank you for your letter dated August 1, 2012, regarding the operation of the Cobell Settlement and its relation to the Indian Lands Consolidation Act (ILCA). I appreciate your comments explaining your understanding of the intent behind the Cobell Legislation that authorizes and implements the Cobell Settlement, particularly given your leadership role in enacting the Cobell Legislation. The Solicitor's Office has reviewed the specific question of whether the lien provisions in ILCA apply and has concluded that the lien provisions of ILCA do not apply to the land consolidation program established under the Cobell Settlement and its implementing Legislation.

The ILCA lien provisions were enacted prior to the Cobell Settlement and its implementing Legislation and were intended to establish an ongoing and self-sustaining program to reverse the effects of the allotment policy on Indian tribes over the long-term. It is to be funded, in the first instance, through the use of appropriated funds, with the intent that liens would be placed on land purchases where tribes would repay the purchase price in order to generate long-term continual funding for future acquisitions.

In contrast to the existing ILCA program, the Cobell Settlement and its implementing Legislation establish a unique, one-time Land Consolidation Fund in the amount of \$1.9 billion that must be expended within 10 years and sets forth precise purposes for the use of the Fund. None of the express purposes of the Fund allow for the imposition of liens on tribes to repay the value of lands acquired pursuant to the Cobell Settlement and its implementing Legislation. The Solicitor's Office has concluded that the lien provisions of ILCA do not apply to the Cobell Settlement and its implementing Legislation. The provisions of ILCA only apply to the extent that they do not conflict with the Cobell Settlement and its implementing Legislation. Application of the lien provisions would create such a conflict and would be contrary to the intent of the parties and accepted practices of contract and statutory interpretation.

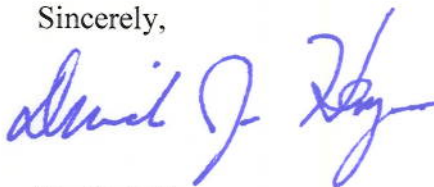
In that regard, the terms of the Cobell Settlement reflect the intent of the parties to resolve litigation, cease long standing legal disputes, and not create new controversies. If the parties had intended to impose the lien provision of ILCA, they would have done so. Both the Cobell Settlement and its implementing Legislation do not specifically reference ILCA's lien provisions. As noted in your letter, no provision of the Cobell Settlement or its implementing Legislation mandates or even contemplates the future tribal recoupment of funds. Under the

Cobell Settlement and its implementing Legislation, unexpended funds revert to the Treasury if not expended within 10 years.

Importantly, the Department's interpretation of the Cobell Settlement and its implementing Legislation is entitled to deference under the well-established *Chevron* analysis. It also should be noted that the Legislation, enacted for the benefit of Indian tribes and individuals, is to be construed liberally in their favor under the Indian canons of construction. Lastly, in order to give effect to each legal authority at issue – the Cobell Settlement, its implementing Legislation and ILCA – these authorities must be construed in a manner that is harmonious and workable. An interpretation that the lien provisions do not apply to the Cobell Settlement is consistent with this principle.

In sum, imposition of the ILCA lien provisions would create an unexpected burden on Indian tribes that is contrary to the intent of the parties and well-established principles of statutory construction. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Hayes", with a stylized flourish at the end.

David J. Hayes

cc: Hon. Hilary Tompkins, Solicitor, U.S. Department of the Interior