



NATIONAL CONGRESS OF AMERICAN INDIANS

TESTIMONY OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

W. RON ALLEN, TREASURER

ON

S. 2636 – THE RESERVATION LAND CONSOLIDATION ACT OF 2016

BEFORE THE

U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 14, 2016

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On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities, I would like to thank the Senate Committee on Indian Affairs for holding this hearing on these important pieces of legislation.

I am here to present NCAI's testimony on S. 2636 – the Reservation Land Consolidation Act of 2016. This simple and straightforward legislation will amend the Indian Reorganization Act to allow tribes to restore their tribal homelands by making certain land transactions occurring within tribal reservation boundaries mandatory. NCAI fully supports this legislation as it fits within the original intent of the Indian Reorganization Act, by helping restore tribal homelands and streamlines the lengthy, and sometimes arduous, process at the Department of the Interior. We urge this Committee and Congress to pass S. 2636 to further tribal self-governance and self-determination by restoring tribal homelands.

After the initial colonial and treaty era, tribes had to contend with the Indian removal policies of the 1830s which placed tribes on reservations, in many cases hundreds if not thousands of miles away from their traditional homelands and sacred places. With the passing of the Dawes Act in 1887, the federal government began to allot Indian lands, breaking up reservations into smaller parcels and placing them into individual ownership.

While some individual Indians received title to the lands, most of it was sold to settlers, timber and mining interests, and otherwise left tribal ownership. In total, nearly two-thirds of all reservation lands, more than 90 million acres, were removed from tribal control without compensation.

Allotment created a checker board effect on tribal lands, with some land within the reservation boundaries held in trust, and some owned by private land owners or other. The non-contiguous nature of jurisdiction lands has harmed tribes' ability to exercise their sovereignty governmental rights over all of the lands within their reservation boundaries.

The IRA marked a significant change in federal Indian law policy, signaled a shifting from the detrimental policies of assimilation and allotment, to the reorganizing of tribal governments and restoration of tribal homelands. The principal goal of the Indian Reorganization Act was to reverse the abrupt decline in the economic, cultural, governmental, and social well-being of tribal communities.

One of the IRA's principal authors, Congressman Howard of Nebraska, described the fundamental purpose of the IRA:

This Congress, by adopting this bill, can make a partial restitution to the Indians for a whole century of wrongs and of broken faith, and even more important—for this bill looks not to the past but to the future—can release the creative energies of the Indians in order that they may learn to take a normal and natural place in the American community.¹

Section 5 of the IRA (25 U.S.C. §465), which will be bolstered by the passing of S. 2636, is broadly designed to implement the fundamental principle that tribal homelands are an integral part in supporting tribal self-governance, self-determination, and tribal cultures:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.²

Further, the legacy of the allotment policy still means that deeply fractionated heirship of tribal trust lands means that, for most tribes, far more Indian land passes out of trust than into trust each year.

Only about 8 percent of the 90 million acres of lost tribal lands have been restored since the IRA was passed over 80 years ago—and most of this was land that was returned soon after passage of the Act. While the current Administration has established a goal of placing 500,000 acres back into trust, and is close to achieving it, that's still only about half a percent of the original 90 million acres.

Today, many tribes are located far away from their historical, cultural, and sacred places, and far from traditional hunting, fishing, and gathering areas. And many of these lands are insufficient lands to support housing, exercise civil and criminal jurisdiction, economic development, enforce, and expand tribal infrastructure—essential, to practice true tribal self-governance.

The restoration of tribal homelands is the most fundamental obligation of the federal trust responsibility.

The bill before the Committee today, S. 2636, plays an important role in strengthening the original intent of the IRA while helping support tribal self-governance and self-determination by making commonsense tribal land acquisitions to restore the tribal jurisdiction over their homelands

The trust land acquisitions impacted by S. 2636 take place in extremely rural areas and involve home sites of less than 30 acres within the tribe's current reservation boundaries. These acquisitions are not controversial in any way, and necessary for the consolidation of fractionated and allotted lands which most often are grazing, forestry, agricultural, housing, health care clinics that serve both Indian and non-Indians, and Indian schools.

¹ 78 Cong. Rec. 11731 (1934).

² 25 U.S.C. §465

S. 2636 also addresses one of the most difficult issues in the land to trust process which is raised by tribal leaders at every NCAI meeting: the backlog of applications and the interminable delays on decisions at the Department of the Interior.

Too often have tribes spent scarce resources to purchase land and prepare a trust application only to have it sit for years or even decades without a response. In addition, the Department of the Interior has limited resources in its budget to address all of the applications in a timely manner. By restoring lands already owned by a tribe back to trust status within the reservation boundaries, allows both tribes and the Department of the Interior to focus their resources elsewhere because these decisions are non-controversial. Tribes will no longer risk losing funding and support for the projects that they have planned for the land and will be better equipped to provided services and opportunities for their tribal citizens.

Further, while S. 2636 fits squarely into the original intent of the IRA and Section 5, it supports tribal self-governance and self-determination. Land consolidation and restoration of trust lands within reservations boundaries provides surety for tribes looking to exercise the fundamental right of self-governance. Lack of contiguous parcels of land within a tribe's boundaries makes it extremely difficult to plan development projects, buildout infrastructure, provide health and education services to tribal citizens, exercise tribal jurisdiction to protect the safety of all members of the community.

In closing, the simple clarification S. 2636 makes to Section 5 of the IRA not only seeks to bolster the original intent of the Act to restore tribal governments and homelands, but stands in the 21st Century policies of further tribal self-governance. NCAI fully supports S. 2636 and asks that this Committee act swiftly to pass it so it can be considered by the Senate.