



THE SENECA NATION OF INDIANS

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TESTIMONY OF ROBERT ODAWI PORTER PRESIDENT OF THE SENECA NATION OF INDIANS

before the

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES UNITED STATES HOUSE OF REPRESENTATIVES

LEGISLATIVE HEARING ON H.R. 3532 THE AMERICAN INDIAN EMPOWERMENT ACT OF 2011

February 7, 2012

INTRODUCTION

Nya-weh Ske-no. Mr. Chairman and members of the Committee, I am thankful that you are well and I am pleased to appear today to discuss the written testimony I am submitting for the record on behalf of the Seneca Nation of Indians in support of H.R. 3532, the American Indian Empowerment Act of 2011.

BACKGROUND ON THE SENECA NATION OF INDIANS

The Seneca Nation of Indians (“Nation”) is one of America’s earliest allies, historically aligned with the other members of the historic Haudenosaunee (Six Nations Iroquois) Confederacy and living in peace with the American people since the signing of the Canandaigua Treaty over 217 years ago on November 11, 1794, 7 Stat. 44. Our Nation has entered into numerous treaties and agreements with the United States since that time and we have always sought to live up to our side of this relationship, despite repeated instances in which the United States has not done so.

I firmly believe that the most important promise made to us by the United States under the Canandaigua Treaty is that the Seneca Nation would be recognized as a sovereign nation and that the title and unimpeded use of our lands would remain secure. Specifically, the United States made a commitment to us that it made no other Indian nation – that we would retain and the United States would guarantee to us the “free use and enjoyment” of our lands. When coupled with the federal agreement to protect our right to hold fee title to our own land, subject to a federal restriction against alienation and taxation, this U.S. commitment has served as the basis for a level of freedom possessed by the Seneca people that we believe is unmatched by other indigenous peoples in the United States.

Because of this treaty-protected freedom, our Nation has been able to advance in many of our efforts towards recovering from nearly 200 years of economic deprivation inflicted upon us by the United States and the State of New York due to devastating losses of our lands and resources. Both our Nation government and individual Seneca citizens have benefited from the opportunity to expand into economic trade with non-Indians during the last 40 years, focusing primarily on the gaming and tobacco businesses. We have fought hard for our recent economic success – just as we have fought hard to protect our lands.

RESPECT FOR TERRITORIAL SOVEREIGNTY IS THE SOURCE OF TRIBAL EMPOWERMENT

Key to the economic empowerment and success of the Seneca Nation of Indians has been the legal status of our lands -- the Seneca Nation holds legal and beneficial title to our lands in fee, subject to a federal law restriction against alienation and taxation. Unlike many Indian tribes, our land is not held in trust for us by the United States.

Territorial sovereignty -- the right to determine what happens with our own land -- is an essential element of tribal sovereignty.

It diminishes tribal powers and inhibits tribal empowerment when federal law allows other governments run by other people to tell a tribal government what the tribal government can and cannot do with the tribal government's own land. This is true whether the "trustee" is great and careful, or awful and sloppy. Either way, when a trustee is holding title to your land, and must approve everything you seek to do with your property, you as the beneficiary are removed from responsibility, but also deprived of the ability to react swiftly. In today's fast moving and competitive market, development of trustee-held property often is too late to capture advantage or too costly to warrant investment. Delays caused by the trusteeship and requirements burdening the trustee, intentional or not, are huge impediments to economic development in Indian Country.

H.R. 3532 -- THE AMERICAN INDIAN EMPOWERMENT ACT OF 2011

The bill before the Subcommittee would provide Indian tribal governments with greater control and flexibility over some or all of their lands. It would do this by enabling Indian nations and tribes to voluntarily convert some or all their existing tribal lands from tribal trust lands held by the United States to tribal restricted fee status held by the tribal government and thereby enjoy the enhanced flexibility that attaches to restricted fee land holdings.

That flexibility should produce great savings in time and cost that otherwise would burden development on tribal trust land. It would eliminate the cumbersome and expensive federal review and approval process, and would clarify that land use law adopted by the Indian tribe preempts all law, including federal, with respect to development and use of the tribal restricted fee lands. In other words, if an Indian nation chooses to enact its own laws governing its own lands it holds in restricted fee, those are the only laws that apply.

H.R. 3532 would remove the obstacles to economic development that are inherent in the federal trusteeship. It would authorize other Indian tribes to follow the path taken by the Seneca Nation and restore to other Indian tribes the basic attributes of territorial sovereignty over their own land.

SECTION BY SECTION ANALYSIS OF H.R. 3532

What follows is a brief overview of the provisions in the bill.

Section 1. Short Title. The bill is entitled the “American Indian Empowerment Act of 2011”.

Section 2. Empower Tribes to Accept Restricted Fee Tribal Lands.

Subsection (a) “Conveyance of Tribal Trust Lands to Restricted Fee Tribal Lands” would require the Secretary of the Interior, at the request of an Indian tribe, to transfer to the Indian tribe in restricted fee status the title to land the United States currently holds in trust for the benefit of the Indian tribe. The subsection requires this mandatory conveyance to occur within 180 days of receipt of the written request from the Indian tribe’s governing body. The lands so conveyed would continue to be subject to a federal restriction against alienation and taxation.

Subsection (b) “Attributes of Restricted Fee Tribal Lands” would clarify and confirm that all restricted fee lands are and remain “Indian country” for purposes of 18 U.S.C. § 1152 and remain subject to the restrictions on alienation and taxation set forth in 25 U.S.C. § 177. This subsection ensures that restricted fee land does not lose its status as “Indian country” nor its protections against alienation and taxation.

Subsection (c) “Tribal Authority Over Restricted Fee Tribal Lands” would confirm an Indian tribe’s right to lease or grant easements or rights of way across its lands for any duration of time

without review or approval by the Secretary of the Interior, notwithstanding the provisions of 25 U.S.C. § 415 to the contrary. Section 415 is the basis for the general requirement that leases of tribal land are subject to federal approval and includes limitations on use and duration.

Subsection (d) "Tribal Preemption Authority Over Restricted Fee Lands" would clarify that a tribal system of land tenure governing the use of tribal restricted fee lands preempts Federal laws governing the use of such lands. In order to have such preemptive effect, this provision requires the Secretary to publish the tribal law in the Federal Register within 120 days of having received it from the Indian tribe.

Subsection (e) "Trust Responsibility Not Diminished" would clarify that the federal trust responsibility to Indian tribes is not diminished by this law.

WHY THIS LEGISLATION IS NEEDED NOW

We believe enactment of this legislation would lead to an "Economic Spring" in Indian Country.

Most tribal land today is held in trust by the United States for the Indian tribe as beneficiary. Among other things, this means the trust land is subject to a federal restriction against alienation and taxation. As trustee for tribal trust lands, the federal government holds "legal" title to lands (the tribe holds "beneficial" interest).

But land held in trust also means that an Indian tribe seeking to implement economic development projects on its own tribal trust lands consistent with its own tribal laws governing use of its lands must first complete a variety of federal review and approval processes. In other words, because the trustee of its land is the federal government, the law treats the Indian tribe's land as if it is federal land held for the general public, and requires an Indian tribe to go through the entire procedural obstacle course required for the development of federal lands that are held by the United States for the general public's interest.

While there may be a legitimate debate over whether it is sound public policy, in the general public's interest, to make it very difficult to develop land that the United States holds for the benefit of the general public, it is unacceptable that these same obstacles are placed in the way of an Indian tribe seeking to develop its own land in the exercise of tribal self-determination and tribal self-governance.

An Indian nation's land is not held for the benefit of the general public. That land is held solely for the benefit of the Indian nation, alone. And, in all fairness, rules and requirements that are designed to protect the general public's interests do not work well, and in fact, often work against, the interests of an Indian nation. For example, the federal government has in place a myriad of program regulations that address leases, permits and rights of way; agricultural leases; harvesting and marketing of forest products; grazing; utilities; and oil, gas and other mineral development on federal lands. These regulations call for federal approvals because they apply to

federal lands. These federal review and approval processes, in turn, often trigger costly and time-consuming analyses under the National Environmental Policy Act. The costs and delays Indian tribes undergo in navigating these federal processes hamper tribal ability to pursue economic development and job creation activities, subject tribal governmental decision making to unnecessary levels of federal review, and stifle outside business investment in Indian country because of the extra costs and delays involved. These costs and delays have grown in recent years as federal decision makers defensively (and perhaps understandably) set up painstaking reviews to avoid subsequent claims that they have breached tribal trust obligations in the decisions they are asked to make.

A key feature of this bill is its express affirmation that gives, under authority which the U.S. Constitution vests in the U.S. Congress, preemptive effect to tribal laws governing land use and development of a tribe's lands held in restricted fee subject to a federal restriction against alienation taxation. The bill language would clarify existing law with an express statement of federal deference given to tribal laws governing the use of restricted fee lands, to the exclusion of federal and state laws.

A few tribal nations, like the Seneca Nation of Indians, have long held some or all of our land in restricted fee status, subject to a federal restriction against alienation and taxation. Our Nation laws govern all conduct on the lands we hold in restricted fee. This legislation would open up the same opportunities for economic development and territorial sovereignty to all Indian nations and tribes.

Isn't it time that the property rights of American Indian nations and tribes are respected and protected? Isn't it time to respect the right to govern our own lands with our own laws in our own way? If not now, when? Non-Indians should respect the inherent and treaty-recognized rights of Indian nations to control what happens on our own territories. That's exactly what the United States promised the Seneca Nation and the Seneca people in 1794. And this bill would further extend that promise for the benefit of all other Indian nations and tribes in the United States.

CONCLUSION

I thank you, Mr. Chairman, and Ranking Member, Congressman Dan Boren, for introducing H.R. 3532 and for holding this hearing on it. I hope you and your colleagues will see fit to move this bill forward to enactment this year. And I ask that this Subcommittee continues to ensure, with this and every other bill you consider, that the U.S. Congress, in conformity with its responsibility under the U.S. Constitution, honors our treaties as the supreme law of the land and protects the inherent, sovereign right of American Indian nations and tribes to regulate all commerce and conduct on what remains of our Indian Country. Thank you for this opportunity to provide testimony and I ask that it be made part of the record of this hearing.

Nya-weh.