



Written Testimony of
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JAMESTOWN S'KLALLAM TRIBE
AND
TREASURER OF THE NATIONAL CONGRESS OF AMERICAN INDIANS**

Legislative Hearing by the Subcommittee on Indian and Alaska Native Affairs
**“TO EMPOWER FEDERALLY-RECOGNIZED INDIAN TRIBES TO ACCEPT
RESTRICTED FEE TRIBAL LANDS, AND FOR OTHER PURPOSES”**

Tuesday, February 7, 2012

On behalf of the Jamestown S'Klallam Tribe, which is located on the Olympic Peninsula in western Washington, I want to thank you Chairman Don Young and the members of the Subcommittee on Indian and Alaska Native Affairs for the opportunity to provide testimony on trust land acquisitions and barriers that hinder Tribes in the land-into-trust process. This is an important topic not only to my Tribe, but to all Federally-recognized Tribes in the United States.

In addition, as the Chairman of the Department of the Interior Self-Governance Advisory Committee (DOI-SGAC) representing more than 260 Self-Governance Tribes in the Department of the Interior, I would also like to express appreciation to both Chairman Young and Vice-Chairman Dan Boren for introducing H.R. 3532, the American Indian Empowerment Act of 2011, and for your continued support to empower Tribes and Tribal Self-Governance.

**Trust Land Acquisitions are Critical to Tribal Self-Governance
and Economic Self-Sufficiency**

Trust land acquisition is critical to Jamestown's Tribal economic and community development that benefits both the Tribe and our neighboring non-native communities. Importantly, trust land also allows the Tribe to rebuild our homelands which were taken away during the Treaty period in the mid-1800's.

Our trust land is used for numerous governmental purposes such as health care, education, housing, traditional/cultural ceremonies, religious practices and economic development. Carrying out these activities on trust land - our own sovereign land - helps the Tribe improve the socioeconomic conditions of our Tribal citizens, allows our Tribal government to rely less on federal, state and local governments to address these social welfare needs, and greatly benefits all residents – Indian and non-Indian alike – in our community.

Numerous studies demonstrate that a direct correlation exists between investment in Indian country and socioeconomic gains. Trust acquisitions are a key element in this process because a land base is a necessary prerequisite to many Tribal economic activities. These positive impacts extend beyond the reservation and into our surrounding communities.

The Tribe's trust land acquisitions have resulted in the establishment of Tribal businesses that support the local economy and create job opportunities for our Tribal citizens and non-Indian neighbors alike. For example, our Longhouse Market and Deli property have created employment and retail opportunities and provides an urgently needed service to an underserved community in the rural Blyn community, located in East Clallam County in Washington State.

The Tribe's trust lands also support the local tourism industry. The Tribal government campus that borders a major highway for the Olympic Peninsula in Western Washington includes a traffic rest stop and tourism pull-out to provide restroom facilities and information (including maps, cultural, and environmental information) on the Peninsula, as well as, hospitality options for local and tourism traffic.

The Tribe's trust lands have also served as a valuable tool to build better and stronger intergovernmental relationships with local communities and state agencies. The Tribe's governmental campus in the Blyn community includes excellent meeting facilities where numerous community and inter-governmental meetings have successfully taken place.

The Tribe's trust lands have also helped us and our local community to protect, preserve and promote education and cultural/traditional practices. As an example, we placed our property on the Dungeness River into trust and established the Railroad Bridge Park which is the location of the Dungeness River Audubon Center. The park serves the local community and provides educational opportunities for local K-12 students to learn about Tribal traditional cultural values on protection and stewardship of nature and the environment.

The health and welfare needs of our citizens and the surrounding non-Indian community have also greatly benefited from our Tribal trust lands. When the local District 3 Fire

Department was losing its existing lease on a facility in the area, the Tribe placed Tribal property on Highway 101 into trust and built a fire station for the use of the local fire district and charges the Department substantially below market rent for the facility. The fire station provides quick emergency response services for all residents of East Clallam County, including the Tribal properties. This action significantly reduced the fire protection insurance premiums of local residents, the Tribe and our businesses. In addition, the Tribe's 150,000 gallon water reservoir (which will be expanded to 350,000 gallons in 2012) with five associated fire hydrants, provides ready flow of water in the event of a fire to the underserved rural community of Blyn, including residents, businesses, and a community church. This water system also contributed to lowering the local resident's fire insurance premiums.

These uses of our Tribe's trust lands illustrate how well our trust land acquisitions have been used for a broad range of economic, governmental, educational, and cultural services that benefit our Tribal citizens and the surrounding community. I am aware that many other Tribes throughout the United States place land-into-trust for the same reasons and produce the same benefits for their Tribal members and members of their local communities.

Legal Impediments to Trust Land Acquisition

The U.S. Supreme Court's *Carcieri* decision in 2009 has significantly jeopardized the ability of Tribes to fully exercise our Tribal Self-Governance rights and inherent governmental power to better our economic self-sufficiency by restricting the Secretary's authority to place land-into-trust. If this decision is allowed to stand the future of economic development on Tribal trust land will suffer greatly because investors will not commit capital to develop projects when the legal status of the land is uncertain.

In a report by the United States Government Accountability Office (GAO), GAO stated that the *Carcieri* decision has created a barrier to economic development in Indian Country because of the uncertainty surrounding the conversion of Tribal fee land-into-trust status. The Obama Administration has identified this issue as one of the biggest impediments to job growth in Indian Country. Until Congress clarifies the ambiguity that the Supreme Court created in its decision in this case, many Tribes will be forced to ask Congress for Tribal-specific legislation to resolve their land-into-trust issues, rather than submitting their applications to the Department of the Interior (DOI) for consideration. Congress should resolve this issue once and for all by adopting legislation which reaffirms that Congress intended that the Indian Reorganization Act of 1934 (IRA) authorized the DOI Secretary to take land-into-trust for all Federally-recognized Tribes.

In addition to undermining Tribal sovereignty, jurisdiction and economic self-sufficiency, the *Carcieri* decision threatens the public safety of the Tribal community and

surrounding non-native community by creating further chaos in an already complex jurisdictional system. It is critical that Congress act to clarify that the intent of the IRA was to provide the Department of the Interior's Secretary with the authority to take land-into-trust for all Federally-recognized Tribes.

Tribal opponents have also used the *Carcieri* decision as a legal basis for challenging the status of Indian Country land that has been held in trust for years. Make no mistake, what these opponents of Indian Country want is a diminishment of Tribal power and a complete overhaul of the land-into-trust process. They want the legal right to veto the placement of land-into-trust and the legal right to take land that has already been placed in trust out of trust. This is a direct attack on Tribal sovereignty. Indian trust land is a key foundation for Tribal sovereign authority and jurisdiction, and it provides federal protection for Tribes from inappropriate and unnecessary intrusion into Tribes' sovereignty by state and local governments.

A legislative fix is needed to reverse the *Carcieri* decision and prevent the further erosion of Tribal trust land. Tribes are in a unique position to bolster local economic growth, especially in rural communities, where Tribes are increasingly the area's largest employer. The revenues not only provide better quality and quantity of services to Tribal communities, but to surrounding non-Indian communities as well.

Empowering Tribes and Strengthening Tribal Economies

Since 1988, the Tribe has been actively engaged in Self-Governance and today is one of the national leaders in successfully implementing and operating programs under Self-Governance that were previously managed by the federal government. Self-Governance is successful because Tribes have the freedom and flexibility to manage our own affairs. We know best how to provide for and serve our communities and Self-Governance allows us to prioritize our needs and plan our future in a culturally appropriate manner. Tribes have embraced this paradigm of empowerment over the former paternalistic structure that previously undermined the federal-Tribal relationship.

H.R. 3532, the American Indian Empowerment Act of 2011, contains ideas that align with the foundational principles of Tribal Self-Governance. We support legislation that enhances our ability to exercise greater Tribal authority over our lands with less federal, state and local intrusion. We like the idea of legislation that reinforces Tribal rights and sovereign authority over Tribal lands and language which clearly states that federal, state and local governments do not have jurisdictional authority over any activities on tribal lands. The language in any such legislation should cover all aspects of jurisdiction, including, for example, jurisdiction over environmental, taxation, criminal and civil matters.

We are concerned, however, about potential legal challenges and court interpretations to this broadened scope of Tribal jurisdiction that might end up impeding rather than helping expand Tribal Self-Governance and lead to more federal oversight. In addition, past court decisions have tied the scope and nature of the United States' trust responsibility to how much management, regulatory and other control federal agencies have over Tribal trust assets. Under these decisions, as Tribal authority over trust assets and lands increases the federal duty and responsibility to protect those lands and resources is diminished. Careful thought needs to be given to how provisions in this type of legislation can be structured to avoid the pitfalls of the past which have resulted in the diminishment of the United States' duties and responsibilities towards Indian Tribes. In this connection, the bill helpfully states that the trust responsibility of the federal government is not diminished, language that can provide a starting point to ensure that the bill adequately protects Tribal sovereignty and rights into the future.

Conclusion

In summary, Mr. Chairman, we are supportive of some of the ideas aimed at empowering Tribes to have broad jurisdictional and governmental authority over Tribal trust lands contained in the American Indian Empowerment Act of 2011. We are concerned that any legislation of this nature be drafted carefully so that it does not undermine the duty of the federal government to protect Tribal assets and defend Tribe's sovereignty and jurisdiction. I urge you to reach out more broadly to Tribal leadership throughout the country so that the bill can be discussed fully.

I also urge you to support a legislative fix to the *Carcieri* problem. Congress should resolve the *Carcieri* issue once and for all by adopting legislation that reaffirms that Congress intended that the IRA authorized the DOI Secretary to take land-into-trust for all Federally-recognized Tribes. This small legislative fix will go a long way towards helping Tribes empower and strengthen their economies. I thank you Mr. Chairman for the opportunity to discuss my thoughts about this important legislation.

Thank you.