

TESTIMONY
OF
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ON
H.R. 2880, THE FIVE NATIONS INDIAN REFORM ACT
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
SEPTEMBER 18, 2001

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here to present the Department's views on H.R. 2880, the Five Nations Indian Reform Act. I want to thank you for holding this hearing on a matter of tremendous importance to Indian people of the State of Oklahoma. The Department supports H.R. 2880.

Background

Individual Indians who are members of the Five Nations (formerly known as the Five Civilized Tribes)¹ face certain problems involving restricted property which results in disparate treatment of these lands. H.R. 2880 seeks to correct the disparity in the treatment of individual Indian allotted lands that resulted from prior legislation. The inequality arose because of the Five Nations' treaty-based fee ownership of their lands. Due to this fee ownership, the Five Nations avoided the forced allotment of their lands under the General Allotment Act. Since the Federal government did not own the Five Nations' lands, it did not have legal authority to issue trust patents to Five Nations members.

¹The term "Five Nations" means the Cherokee Nation, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Seminole Nation of Oklahoma, and the Muscogee (Creek) Nation, collectively, which are historically referred to as the "Five Civilized Tribes."

As result, there now exists a unique and complex system of Federal allotment legislation which applies only to the allotted lands of the Five Nations.

For almost one hundred years, members and lineal descendants of the Five Civilized Tribes, now known as the Five Nations, have been subject to Oklahoma State Court jurisdiction for administrative approval of transactions, including land conveyances, probate, partition, adverse possession, and quiet title actions, involving restricted Indian lands held by Indians who possess blood quantum levels of one-half or more. In these administrative matters, the Oklahoma State courts may act on behalf of the Secretary of the Interior. Unfortunately, jurisdiction in these areas has resulted in costly, confusing, and cumbersome legal proceedings in State court. Additionally, efforts at meaningful Indian estate planning have been hindered and the probate of Indian estates has been delayed and become unduly complicated. By contrast, the same matters involving other individual Indian restricted lands are managed administratively by the Department of the Interior, primarily within the Bureau of Indian Affairs, and no such state court jurisdiction exists for these lands.

The Department has been involved in assisting the Five Nations in the development of legislation that would end the jurisdictional disparity that exists between Five Nations Indian owners of restricted lands and similarly situated members of other tribes. H.R. 2880 would treat Five Nations members who are owners of restricted lands in the same manner as other Indians for whom the United States holds restricted lands.

Bill Analysis

H.R. 2880 would make several important changes to Federal laws concerning restricted land held by individual Indians of the Five Nations. Specifically, the bill would make all restricted property subject to restrictions against alienation, conveyance, lease, mortgage, or creation of liens regardless of the degree of Indian blood of the individual Indian who owns the property and would establish requirements enabling individual Indians to use proceeds from the conveyance of restricted property to purchase other property to be held in restricted status. The bill would also grant the Secretary of the Interior exclusive jurisdiction to approve conveyances, leases, and voluntary partition in-kind of restricted property, grant the Secretary of the Interior exclusive jurisdiction to probate wills or determine heirs of deceased individual Indians, and to adjudicate estate actions involving trust or restricted property and securities. Finally, H.R. 2880 authorizes the Secretary of the Interior to administer certain oil and gas leases on restricted lands held by individual Indian

The Administration does recommend one technical change to H.R. 2880. The Administration recommends section 208, Mortgages, be amended by striking “only” and inserting at the end of the section “or any other applicable federal law.”.

The land base of the Five Nations is crucial to the culture and heritage of these tribes. The preservation of the land base is a common goal among the Five Nations and is consistent with the Administration’s promotion of Indian self-determination and economic self-sufficiency. This concludes my testimony. I will be happy to answer any questions you may have.