

**TESTIMONY OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 215, AMERICAN INDIAN EMPOWERMENT ACT OF 2017**

OCTOBER 25, 2017

Good afternoon, Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee. My name is John Tahsuda, and I am the Acting Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to present the Department's views on H.R. 215, the American Indian Empowerment Act of 2017. H.R. 215 would allow the Secretary of the Interior to transfer land currently held in trust into restricted fee status upon the request of an individual tribe.

Over the past several months, the Department has engaged with tribes on a government-to-government basis on a wide range of priorities and issues. In many of those meetings, we have heard interest and requests for the Department to delegate more authority to tribes, allowing them to make their own decisions on their own lands. Specifically, we have been asked to assess our existing regulations and statutes to determine how best to grant tribes more autonomy and independence over their resources. To begin this process, we have begun a preliminary examination of proposals and projects that may allow for tribes to enjoy increased flexibility under existing statutory authority such as the Indian Trust Asset Reform Act (ITARA).

The Department of the Interior, recognizing this interest is not shared by all tribes, also understands its obligation to embolden Indian country with tools to create and secure opportunities for economic development and growth. The intent behind H.R. 215 is consistent with many of the sentiments we have heard over the past several months. Fundamentally, we believe tribal control over tribal lands is a critical piece of tribal self-determination and sovereignty. The Department supports the goals of H.R. 215 and would like to work with the sponsor to clarify a number of the provisions in the legislation.

H.R. 215

H.R. 215, the American Indian Empowerment Act of 2017, would require the Secretary, upon the request of an individual Indian tribe, to convey land currently held in trust by the United States into a restricted fee status. Any restricted fee land held by a tribe would be identified as "Indian country" as defined in 18 U.S.C. § 1151, and subject to the restrictions of the Non-Intercourse Act, 25 U.S.C. § 177. The legislation does not make mention of Alaska Native corporations; recognizing the structure in Alaska is unique, the Department would like to work

with the Committee to clarify the Committee's intent. It is also unclear whether the provision would apply to restricted fee land held by tribes acquired outside the proposed trust-to-fee conversion process.

The Department has a number of recommendations to further strengthen the overall intent of the legislation. First, we would like to further clarify whether Interior would play a role in managing land title upon trust land being conveyed into a restricted status. Typically, the Department functions as the realty arm for Indian country when taking land into trust. Since managing title will need to continue, we recommend the inclusion of language to affirm Interior's current role in the process. We also recommend the inclusion of a clause that discusses whether land converted into a new status can be moved back into trust status if the tribe so desires, or whether this process is irreversible. The Department of Justice advises that many trust administration federal statutes, as well as case law, treat trust and restricted land the same, and it is not clear what effect this provision would have on those statutes or the relevant case law.

The Department also welcomes the opportunity to work with the sponsor to further clarify what liability may or may not remain with the federal government upon the official change in land status. There have been previous instances throughout Interior's history when the Department granted individual tribes opportunities to manage lands and/or resources. In turn, the federal government was sued by the tribes and forced to indemnify for any on-reservation issues that resulted from the litigation. If a tribe is going to take on complete decision-making control of land and resources, we believe liability on behalf of the federal government should be nonexistent.

Section 2(c) provides that once the land is transferred to restricted fee status, a tribe may lease the land, or grant an easement or right-of-way across it, for any period of time without review and approval by the Secretary, notwithstanding the provisions of the Indian Long-term Leasing Act. The Department would like to work with the sponsor to further discuss inconsistencies with leases or rights-of-way granted on Indian land under other authorities.

Lastly, Interior greatly appreciates the sponsor's efforts to ensure land conveyed into restricted status has protections from alienation and taxation.

Additionally, the overall issue of taxation on tribal lands has been of great interest to the Department, particularly since there are unclear parameters on state and local jurisdictional authority in the matter. We recognize the numerous complexities that accompany the checkerboard of tribal, private, and states lands. Our work thus far has enlightened us as to further ambiguity regarding how states use taxation in situations such as when Indian products are sold outside reservation boundaries. Recognizing that this uncertainty is a significant issue, we welcome the opportunity to work with this Subcommittee on how to best address these broader questions, whether in this legislative vehicle or a separate package.

Conclusion

The Department of the Interior welcomes the opportunity to work with this Committee and the Congress to develop a mechanism for enhanced tribal decision-making over tribal lands for those who are interested. We also sincerely appreciate the sponsor's interest in seeking to provide tribes an avenue to more efficiently and strategically manage their lands and resources. The Department recognizes not all tribes will be interested in accessing this authority. That said, we are interested in accessing additional tools in our toolbox to better empower Indian country. Congress, having the plenary authority over Indian Affairs, is the best equipped to help us address these challenges.

Thank you for the opportunity to testify today. I look forward to answering your questions.