

Reservation Proclamations

2016 Partners in Action
July 19-21, 2016
Sault Sainte Marie, Michigan

Gigi Christopher, Attorney-Advisor
Branch of Environment and Lands
Division of Indian Affairs
Office of the Solicitor
United States Department of the Interior

Reservation Establishment

- Reservation establishment is often unique.
- Reservations are established in a variety of ways, including, but not limited to:
 - Treaties
 - Legislation (Acts of Congress)
 - Executive Orders
 - Reservation Proclamations per the Indian Reorganization Act of 1934 (IRA), 48 Stat. 986, 25 U.S.C. § 467

Reservation Establishment

- It is not necessary that there is a formal cession or act setting apart a particular tract of land to create a reservation. The evidence must simply show that a defined tract was appropriated for certain purposes.
 - *Minnesota v. Hitchcock*, 185 U.S. 373, 389-90 (1902).
- Once land is set aside as an Indian reservation, it does not matter what happens to title of individual plots—it retains its reservation status until Congress explicitly indicates otherwise.

What Does “Reservation” Mean?

- “The term ‘Indian reservation’ originally meant any land reserved from an Indian cession to the federal government regardless of the form of tenure.”
- “During the 1850s, the modern meaning of Indian reservation emerged, referring to land set aside under federal protection for the residence or use of tribal Indians, regardless of origin.”
- “In the 1850s, the federal government began frequently to reserve public lands from entry for Indian use. This use of the term ‘reservation’ from public land law soon merged with the treaty use of the word to form a single definition describing federally protected Indian tribal lands without depending on any particular source.”
- The use of the term included individual and unrestricted lands as well as tribal lands.

Felix S. Cohen, HANDBOOK OF FEDERAL INDIAN LAW
§ 3.04, at 190-91 (2012 ed.)(footnotes omitted).

Authority for a Reservation

Proclamation: 25 U.S.C. § 467

- The Secretary is authorized by the IRA to proclaim reservations under 25 U.S.C. § 467 as follows:
 - The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: Provided, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by Tribal membership to residence at such reservations.

Why would tribes want a Reservation Proclamation?

- To clarify jurisdictional boundaries.
- To be eligible for some local, state and federal grants, loans, programs and other funding opportunities.

What are other benefits of getting a reservation proclamation?

- May lead to improved relationships between tribes and local governments.
- May facilitate negotiations of intergovernmental agreements with local governments.
- May simplify legal analysis regarding land status.
- May head off legal challenges to land status.

Examples of Statutes that refer to “Indian reservation”

Statute	Reservation Reference
Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(10)	“[R]eservation” means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation”.
Indian Gaming Regulatory Act, 25 U.S.C. § 2703(4)	The term "Indian lands" means--(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Examples of Regulatory definitions of “Indian reservation”

Statute/Regulation	Definition
25 C.F.R. § 151.2(f)	Unless another definition is required by the act of Congress authorizing a particular trust acquisition, <i>Indian reservation</i> means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, <i>Indian reservation</i> means that area of land constituting the former reservation of the tribe as defined by the Secretary.
25 C.F.R. § 292.2	Reservation means: (1) Land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent; (2) Land of Indian colonies and rancherias (including rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland; (3) Land acquired by the United States to reorganize adult Indians pursuant to statute; or (4) Land acquired by a tribe through a grant from a sovereign, including pueblo lands, which is subject to a Federal restriction against alienation.

What doesn't a reservation proclamation do?

- Impact taxation
 - Trust land is already exempt from taxation under 25 U.S.C. § 465.

Reservation Proclamation Policy

- On July 22, 2014, the Bureau of Indian Affairs (BIA) Director issued revised internal guidelines for submitting reservation proclamation requests.
- On June 30, 2016, Acting Assistant Secretary Roberts announced updates to the BIA Fee-to-Trust Handbook in an effort to improve the land-into-trust and reservation proclamation processes.
- These updates build on the Administration's initiative to help tribal leaders restore American Indian homelands.

Reservation Proclamation Policy

- The 2014 guidelines have now been replaced by a new section on processing reservation proclamations which has been incorporated into the recently revised BIA Fee-to-Trust Handbook.
 - *See Section 3.4 Reservation Proclamations in the BIA Fee-to-Trust Handbook.*
- The updated guidelines establish the standard operating procedures for reviewing reservation proclamation requests from tribes, the requirements for Regional Offices, and the required documentation for approval by the Assistant Secretary – Indian Affairs.

What's different now?

- Previously, a requesting tribe would generally have to wait until the land is in trust before submitting a reservation proclamation request.
- Now, tribes may choose to submit a reservation proclamation request (1) **with** their FTT application, or (2) for lands already accepted in trust.
- When Tribes submit a reservation proclamation with their FTT application, the BIA will endeavor to process the reservation proclamation as soon as possible following acceptance of the land into trust.

Why the change?

- Much of the information, documentation, evidence, etc., that is submitted in a tribe's fee-to-trust application is the exact same information that tribes must submit in a reservation proclamation request.
- The opportunity to simultaneously submit a fee-to-trust application along with a reservation proclamation request may reduce both costs and time for both the BIA and tribes.

New Guidelines

- The revised sections are 3.4.1 and 3.4.2 of the Handbook.
 - 3.4.1 – Post-Trust Acquisition Reservation Proclamations
 - 3.4.2 – Concurrent Trust Acquisitions and Reservation Proclamations
- Reservation proclamations can only be issued for completed trust acquisitions made pursuant to an authority conferred by the IRA (25 U.S.C. § 465).
- A proclamation will not be finalized until the underlying land parcel has been taken into trust.

When is a proclamation unnecessary for a parcel to enjoy reservation status?

- Land within the exterior boundaries of a reservation will enjoy reservation status without a proclamation.
 - “Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.” *Solem v. Bartlett*, 465 U.S. 463, 470 (1984).
- If a fee parcel is contiguous to a reservation, the BIA will process it as an on-reservation trust acquisition, however, if the parcel is not within the exterior boundaries of a reservation, and if the tribe wants the land to be part of the reservation, a reservation proclamation will need to be pursued.

What the difference between an Indian Reservation and Indian Country?

- Indian Country is defined in 18 U.S.C. § 1151 as:
 - (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent,
 - (b) dependent Indian communities, and
 - (c) all Indian allotments, the Indian titles to which have not been extinguished.
- As you can see, all reservations are included in Indian Country, but Indian Country consists of more than Indian reservations.

Questions?

Gigi Christopher

Attorney-Advisor

Branch of Environment and Lands

Office of the Solicitor

Department of the Interior

- jennifer.christopher@sol.doi.gov
 - (202) 208-3702