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IN THE UNITED STATES: A PRESSING NEED TO DEVELOP TRIBAL ECONOMIES – REGAINING SOVEREIGNTY OVER OUR LAND

Introduction

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Articles 26 and 32, recognize the rights of indigenous peoples to their traditional and acquired lands, as well as their right to determine and develop priorities and strategies for the development of their lands and related resources.¹

Underlying the state of Native peoples in America today is their inability to control and utilize their land as their sovereign governments so desire and as recognized by treaties with and laws of the United States of America. Today in the United States, almost all tribal land transactions require approval of the Secretary of the U.S. Department of the Interior (a statutory requirement that is often delegated). At issue is not only access to traditional lands and the status of acquired lands, but also for those lands designated as tribal reservations and villages the ability of tribes to determine, as independent sovereigns, the use and development of tribal lands.

This paper will provide examples of the problems hampering economic development on tribal lands that are the result of United States policies, laws, and regulations. It will also recommend changes that would give tribes more control over their lands. In one sense, the way to address this problem is easy – the US government needs to release its control over the leasing and rights-of-way bureaucracy that prevents native people from freely participating in their own land management and economic development. On the other hand, the legal history behind the leasing and rights-of-way statutes is long and complicated, requiring innovative changes in regulation, legal interpretation and government management practices – not just changes in statutory law. And any changes must accommodate all 566 native nations in the United States.

¹ See UN Declaration on the Rights of Indigenous Peoples, Jun. 26, 2006, art. 26 and art. 32.

A brief history of tribal land management by the United States Government

I am not uninformed that the six Nations have been led into some difficulties with respect to the sale of their lands since the peace. But I must inform you that these evils arose before the present government of the United States was established.... The general Government only has the power, to treat with the Indian Nations, and any treaty formed and held without its authority will not be binding. Here then is the security for the remainder of your lands. No State nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The general government will never consent to your being defrauded. But it will protect you in all your just rights.

– George Washington²

Economic development, community planning, and appropriate land utilization on tribal lands in the United States face many hurdles. Because our lands are held in trust by the United States government, we cannot pledge our land for credit to build our businesses or our communities. The result is slow economic growth that relies on home-grown capital, government grants, and loans and may, through sheer tribal determination and vision, allow our tribes to obtain a credit rating that allows them better access to capital.

Today, the Department of the Interior (DOI) exercises substantial oversight of Indian affairs. With respect to land management (and the collection of fees for land management), the Secretary of the Interior must approve land-into-trust applications, land transfers, rights-of-way permits, leases for business development, and the sale of natural resources. The DOI oversight process results in increases in expenses, time, and uncertainty caused by the bottleneck created by multiple oversight requirements. The statutory oversight hinders business development and acts as a disincentive to potential partnerships with outside entities, credit facilitation, and business planning. It also negatively affects employment, infrastructure management, tribal planning, and general economic viability of each tribal community.

Governments and Tribal Land – a Brief History

There have been government prohibitions on Indian land transactions in North America since 1763; however, originally, the prohibitions were designed to regulate land transactions and prevent non-native encroachment into Indian lands. King George III issued the first prohibition on purchases of North American Indian lands without government approval in his Royal Proclamation of 1763, which closed the frontier to colonial expansion in North America.³ The Royal Proclamation created an “Indian Reserve” with its eastern border along the Appalachian Mountains and provided the historical support for land rights of the First Nations in Canada. In 1783 the nascent Continental Congress of the United States enacted its own prohibition against the extinguishment of aboriginal title in the United States without the consent of the federal government.⁴ And in 1787, the U.S. Constitution gave the federal government the right “to regulate commerce with foreign powers ... and with the Indian tribes.”⁵

² George Washington to Seneca Indians, Dec. 29, 1790, 4 American State Papers 142 (1823).

³ The Royal Proclamation Act (1763).

⁴ Confederation Congress Proclamation of 1783, 25 Journals of the Continental Congress 602 (1783).

⁵ U.S. Const., art. I, § 8, cl. 3.

Beginning in 1790, the United States enacted a series of Indian Nonintercourse Acts regulating commerce between Indians and non-Indians. The most notable provisions of those laws confirmed the inalienability of original Indian title in land in the United States –restricting land transactions to treaties or conventions pursuant to the Constitution⁶. The Indian Nonintercourse Acts also formalized in the statute the term “Indian country.”

The Marshall Trilogy – US Supreme Court and the Federal Trust Responsibility (1823-1832)

Named after Chief Justice John Marshall, who wrote the opinions for the U.S. Supreme Court, the Marshall Trilogy consists of three foundational cases that are based on the international law that existed during America’s colonial period.

The first decision, Johnson v. M’Intosh, proclaims that title to Indian lands belonged to the US Government and that Indians enjoyed only a right of occupancy due to Doctrine of Discovery -- established by the Spanish to justify the taking of aboriginal lands.⁷ This is the basis for the US Government to assert control over tribal land.

In Cherokee Nation v. Georgia, Marshall explained that Indians were not foreign Nations but were “domestic dependant nation[s]” – small nations that have accepted the protection of a larger nation, yet still retain their sovereignty.⁸ Two doctrines result from the Cherokee decision: (1) the “duty of protection,” and (2) the “guardian/ward relationship” between the U.S. Government and the Indian Tribes. The duty of protection means that the U.S., because it asserts ownership over Indian lands, must protect the Indians from all hostiles, including hostile U.S. citizens. The guardian/ward relationship means that the U.S. holds all land and resources in trust for the Indians, creating a fiduciary duty. It is this “trust relationship,” combined with the promises made through 370 treaties with the sovereign Indian nations, that continues to require the U.S. to keep the best interest of the Indians in mind when the federal government deals with the Indians. The trust relationship is perhaps the most pervasive and important doctrine in Indian law and current US Indian policy.

In the third case, Worcester v. Georgia, Marshall found that the individual states had no right to impose their laws on the Indians and, furthermore, federal Indian law “pre-empted” state laws.⁹ The result is that state law generally does not apply within Indian Country.

The Trust Responsibility and the Secretary of the Interior

With the Indian General Allotment Act of February 8, 1887, the United States Congress not only created a methodology for reducing the total land previously recognized as reserved for Indian Tribes, it also provided for sale of “surplus land” to the United States and leases of remaining tribal lands for grazing and mining and gave the Secretary of the Interior control over water rights on irrigated lands. Over time, through acts of the U.S. Congress, the U.S. Secretary of the Interior has been given authority over virtually every transaction involving tribal land and valuable natural resources – farming, grazing and mining (1891), water rights on irrigated lands (1887), timber operations, (1910), oil and gas leases (1924), mineral leases (1938), reaffirming control of rights-of-way across Indian lands (1948), individual mortgages, and deeds (1956).

⁶ Act of July 22, 1790, Pub. L. No. 1-33, § 4, 1 Stat. 137, 138, et seq.

⁷ 21 U.S. (8 Wheat) 543 (1823).

⁸ 30 U.S. (5 Pet.) 1 (1831).

⁹ 31 U.S. 515, 8 L.Ed. 483 (1832).

The Indian Reorganization Act of 1934¹⁰ (IRA) allowed tribes to return to local self-government by tribes and strengthen their communities. It ended the allotment of Indian lands which had resulted in checkerboard ownership of tribal land and land fractionating through inheritance rules and moved toward reducing the federal government power and increasing native self-determination. As a result of this Act and in conjunction with other actions of federal courts and the government, over 2,000,000 acres of land were returned to various tribes in the first 20 years after passage.

However, twenty years later, the termination and relocation phases of the IRA that began in 1954, coupled with the House Concurrent Resolution 108 of 1953, reversed the gains of self-determination and created the federal policy of termination in the United States. During the “Termination Era”, the federal government established a process for dissolving tribes’ status and removing their lands from trust.¹¹ From 1954–1962, 109 Indian tribes and bands were terminated, approximately 1,365,801 acres (5,527 km²) of trust land were removed from protected tribal status, and 13,263 Native Americans lost tribal status.¹² As a result of the US government’s termination policy, the special federal trustee relationship of the Indians with the federal government ended, American Indians were subjected to state laws, and their lands were converted to private ownership.

With the passage of the Indian Civil Rights Act in 1968, the policies of Indian termination were stopped. Several laws attempting to reverse the allotment and termination effects followed, creating a stronger trust relationship between the federal government and the tribes and allowing the tribes to manage their own affairs. For example, the Indian Self-Determination and Education Assistance Act of 1975 provided tribes with the ability to contract with the federal government to manage their own health care and educational benefits. In 1983, the first Indian Land Consolidation Act was passed, providing for tribal land allotments and other land interests to be consolidated, with the consent of the Secretary of the Interior.

Tribes still, however, do not have the ability to manage their land and natural resources without approval of the U.S. Secretary of the Interior.

Current Federal Law and Particular Problems and Resolutions

One would expect that sovereign Indian Nations having ceded vast amounts of tribal land to the United States, forced to leave homelands and restricted in their movement, and making do with what they have would at least have control over their land. Yet today, United States laws require the Secretary of the Interior to manage leases on tribal land and non-Indian rights of way over tribal land, oversee tribal forests, license and permit mineral and oil extraction, restrict the use of other natural resources, divert our water and prohibit tribal uses of tribal land, and more. A sampling of current laws requiring the Secretary of the Interior to approve land transactions includes:

- 25 USC - Chapter 8 – Rights-of-way Through Indian Lands
- 25 USC § 381 - Irrigation lands; regulation of use of water
- 25 USC § 396d - Rules and regulations governing operations; limitations on oil or gas leases
- 25 USC § 397 - Leases of lands for grazing or mining
- 25 USC § 466 - Indian forestry
- 25 USC § 2102 – Minerals Agreements

¹⁰ 26 U.S.C. § 461et seq. (1934).

¹¹ H. Con. Res. 108 (1953).

¹² Prucha, F. P. 1984, *The Great Father*, Lincoln: University of Nebraska Press; Ritter-Knoche, B. 1990. *Termination, Self-Determination and Restoration: the Northern Ponca Case*. M.A. thesis: Department of Anthropology, University of Nebraska-Lincoln; Grobsmith, E.S. and B.R. Ritter, 1992. The Ponca Tribe of Nebraska: The process of restoration of a federally terminated tribe. *Human Organization* 51:1-16.

25 USC § 2218 - Approval of leases, rights-of-way, and sales of natural resources

25 USC § 3504 - Leases, business agreements, and rights-of-way involving energy development or transmission

25 USC § 3715 – Leasing of Indian Agricultural Lands, including highways, railway, telegraph, and telephone lines; pipe lines

The negative impacts of the requirements for the Secretary of the Interior to approve all land transactions are many – primarily resulting from the fact that permits and licenses required from the Department of the Interior regularly are not issued for months, sometimes years. The bureaucratic approval process and its inherent delays has meant that corporations, from Walmart to petroleum companies to small businesses and even potential home purchasers, have decided to go elsewhere rather than wait the months and years it takes to get approval to lease land, obtain a permit, or build a commercial enterprise on tribal land. Even a tribal corporation that entered into an operating agreement with its tribal government/owner in 2011 had to wait 10 months for approval by the Department of the Interior of that agreement.¹³ Such bureaucratic delays cause a severe downward economic spiral on tribal lands, affecting employment, access to capital, housing prices, tribal income, and, eventually, the tribes' ability to provide health, education, and safety services to their citizens.

Below are some examples of problems tribal governments face as a result of the approval processes:

- The Swinomish Tribe in Washington State worked an arrangement for a new Walmart store on their reservation. The arrangement would have brought a million dollars a year in lease revenue for the Tribe and new jobs for tribal members and people throughout the community. As with every lease on Indian lands, the Secretary of the Interior needed to approve it. The process took more than a year, and by the time the lease was approved economic conditions had changed and Walmart had made other plans.
- A corporation desiring to drill on or near a reservation has a clear choice between drilling on tribal land – a 49-step process through 4 federal agencies that includes a delay of 6 to 12 months to wait for the Secretary of the Interior to approve a lease application, plus a drilling fee of \$6500 – and drilling on non-tribal land for a drilling fee of only \$400 and only the landholder approval required. Since 2007, applications to drill on Fort Berthold Indian Reservation, in the heart of the Bakken shale deposit, have increased from zero to 175, but that is in comparison to approximately 1800 permits approved by the State of North Dakota for nearby off-reservation land in 2011 alone.¹⁴ The impact on employment caused by the permitting delay is obvious – the North Dakota Oil and Gas Division estimates that, following initial construction, each active well could create approximately 1000 long-term jobs over the next 14 years.¹⁵
- Today, the vast majority of agricultural lands on reservations are leased out to non-Indian farmers and ranchers, often at less than fair-market value, and all requiring approval of the Secretary of the Interior. In addition, income from the farming on these lands goes to someone other than the tribes. For example, on the Pine Ridge Reservation in South Dakota

¹³ Groen, Wilson. Statement to the Senate, Committee on Indian Affairs. *Legislative Hearing on S. 1684, Indian Tribal Energy Development and Self-Determination Act Amendments of 2011*, Hearing, April 19, 2012. Available at: <http://www.indian.senate.gov/hearings/upload/Wilson-Groen-testimony041912.pdf>.

¹⁴ McKenzie County Farmer, "Experts Say 5,000 New Wells Needed to Secure Leases", <http://watfordcitynd.com/?id=10&nid=1380>

¹⁵ *Ibid.*

in 2002, there were nearly \$33 million in receipts from agricultural production, yet less than one third of that income went to members of the tribe. In 2009, 20 people controlled nearly 46 percent of reservation lands on Pine Ridge through leasing.¹⁶ Similarly, on the Blackfeet Reservation in Montana, the market value of agricultural products sold in 2007 was \$19.5 million, yet more than 30 percent of the 10,100 people on the reservation live in poverty.¹⁷

- The leasing requirements affect more than the value of commercial and agriculture property. Even property values are forced down, as homes on Indian land that can be sold require approval of the Secretary of the Interior for the land on which the home is built to be transferred. This rule also applies to sales of commercial operations. Again, the wait and uncertainty surrounding the closing of a property transaction has a negative effect on the economics as housing and business markets shift and values become uncertain.
- The federal government, in its role as “trustee,” has historically allowed energy, mining, and other extractive industries to exploit Indian nations by routinely shortchanging them on royalties from oil, gas, timber, and other purchase or lease agreements on tribal land.

In each instance, the delays and uncertainty caused by the bureaucratic federal government approval process begins by affecting the immediate transaction – construction of new businesses, development of infrastructure, transfers of property, laying of electric and telephone transmission lines. However, these delays surface in other ways – no new jobs are created while commercial transactions await the permitting process; no new schools or medical facilities can be built (or renovated); no new infrastructure is put in place. Tribes cannot obtain credit because the land cannot be collateralized or pledged against loans. Tribes do not have a tax base that states have that provides financial support and enables qualification for bonding. Tribes have had to return federally-provided funds because the funds are tied to timing requirements that tribes cannot meet due to land-permitting delays. The delays severely impact tribal economic development, resulting in fewer businesses operating on tribal land, fewer jobs, lack of workforce development, and training opportunities. High poverty rates increase, especially in remote and rural areas where there are no off-reservation jobs.

There are other negative effects of the United States’ ability to grant land rights on, under, and through tribal lands. Tribal lands harbor the nuclear plants and hydroelectric facilities that power the United States. Tribal water resources are siphoned away from the reservations and sold for irrigation and mining uses. Tribal soil-rich land is leased to corporations and non-native farmers, and our children eat processed food shipped from thousands of miles away. The U.S. government collects fees for permits and licenses on our land, and those fees are not turned over to the tribes. In return, tribal lands harbor the majority of the nuclear waste produced in the United States. Lands that could be farmed are denied access to tribal water for irrigation. Waste water is pumped into tribal lands with no egress and kills tribes’ natural environment. Tribes are told what they are required to grow on agriculture lands based on early 20th Century history of what was grown on those lands rather than on current market needs and trends.

¹⁶ *Pine Ridge Reservation Allottee Land Planning Map Book*, Village Earth, 2009.

¹⁷ “Selected Characteristics of All Reservation Farms and of Reservation Farms Operated by American Indians or Alaska Natives in Montana,” *National Agriculture Statistics Service 2007 Census of Agriculture American Indian Reservations Volume 2: Tribal Lands in Montana*, U.S. Census Bureau, Census 2000.

Finally, tribes that have the resources have been acquiring land for decades – combining fractionated allotments too small to benefit the multiple individuals who own them; reacquiring former tribal lands and cultural areas; and acquiring land for business and community development. Since passage of the IRA, tribal applications to place these land acquisitions into the “trust” portfolio of the Department of Interior have faced additional bureaucratic requirements and are now impacted by a recent Supreme Court decision - *Carciere v. Salazar* – mentioned below.

It must be noted that there are tribal governments in the United States that are not impacted by these laws and regulations due to their locations, their needs or desires, or the decisions of their citizens and leaders. For most of the tribes, however, economic development, community planning and other major tribal decisions are negatively impacted by the land restrictions and bureaucracy noted above.

Resolution – Self-Determination

Tribes in Indian Country today have both the capacity and the capability to manage, regulate, and control the protection and development of resources on their lands. Many tribes have adopted energy regulations, environmental regulations, historic preservation organizations, and uniform commercial codes that all provide stability and certainty for business development, resource planning, and lending facilities. Tribes have assumed management of their schools and health care facilities. Tribes have established their own telecommunications providers and their own energy companies and facilities to serve their citizens. Tribes have opened businesses around the world and earned AAA credit ratings. In fact, Tribes have taken over many of the functions that the federal government is obligated to provide to Tribes as part of the United States’ trust responsibilities to tribes. Tribes have assumed these responsibilities because the functions were crucial to the Tribes, and the US provision of those functions was inefficient, inadequate, underfunded, or nonexistent.

Although there have been some instances where the United States government has recognized tribal self-determination and self-sufficiency and created programs that allow tribes to truly govern their activities and manage their own health and education initiatives, the United States Congress, agencies, and courts continue to introduce and maintain laws and regulations and create rulings that prohibit tribal communities and tribal members from free use of their land and natural resources. As recently as April 19, 2012, in a Congressional hearing, the representative of the United States Bureau of Land Management cited the Indian Mineral Leasing Act of 1938 as its authority to regulate Indian land as “public land” without consideration for the unique status of sovereign land and without meaningful consultation with the affected tribes.¹⁸

The Marshall Trilogy of Supreme Court cases described above has provided the base upon which almost 200 years of federal legislation, regulations, and policies have been developed. Those are the laws, regulations, and policies that need to be changed to enable self-determination of tribes and their citizens. Because of this history and the varying degree of reliance on the US government by 566 independent, sovereign nations, it is not practical to insist upon across-the-board amendments to remove statutes and regulations that prevent tribes from controlling their land. To be sure, no two tribes have had a similar experience with development of their natural resources, and it is not likely

¹⁸ Spisak, Tim. Statement to the House, Natural Resources Subcommittee on Indian and Alaska Native Affairs. *Oversight Hearing: “Bureau of Land Management’s Hydraulic Fracturing Rule’s Impacts on Indian Tribal Energy Development”*, Oversight Hearing, April 19, 2012. Available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/2012_congressional.Par.34253.File.dat/BLM%20Fracking-Consultation%20Testimony%20%28Committee%29.pdf.

that across the board changes would be welcome by all tribes. Additionally, if the U.S. Congress were able to agree to pass such broad, re-defining legislation, the results would surely be challenged in court cases citing violations of the components of the Marshall Trilogy.

Policy

A policy change that could work today would be a process and guidelines allowing tribes to move out from under federal land transaction oversight by creating their own land leasing and right-of-way regulations and establishing their capacity to enforce them – resulting in delegated power over tribal lands from the Secretary of the Interior. There are precedents for tribes to take over and manage federal programs where they have demonstrated the capacity and desire to do so. The most dynamic and effective recent programs have been supported by the collaborative efforts of the tribes and the U.S. Department of Health and Human Services (HHS). As provided in 25 USC §638, the Secretary of HHS can make payments under the Child Welfare Services Program directly to an Indian tribal organization within any State that has an approved plan for child welfare services.

However, such self-determination policies must be useful and workable by the tribes, and the approval processes to qualify for such programs must be acceptable to tribes. In comparison to the HHS 638 efforts noted above that have active participation by every tribe, no tribe has entered into a Department of the Interior-managed Tribal Energy Resource Agreement (TERA), a mechanism created by law in 2005 that would allow tribes to review and approve leases, business agreements, and rights of way for energy development on tribal lands. While there are many reasons the program has not been used, several considerations offered recently by a member of the Southern Ute Indian Tribal Council include the following:

1. Lack of federal funding for tribes that would be assuming duties and responsibilities of the United States.
2. Lack of clarity of the definition of “inherent federal functions” that are specifically excluded from the authority obtained by a TERA tribe.
3. Required review processes that open tribal decisions to outside input and criticism.
4. Lack of tribal capacity to perform the oversight functions contemplated in a TERA and capacity standards that are vague or unclear.
5. An application and maintenance process that is too time-consuming and distracting to merit disruption of ongoing tribal governmental challenges.¹⁹

While the intent of the TERA program is promising, tribes have considered the program unworkable due to the lack of funding, bureaucratic requirements, and uncertainties.

Clearly, tribes in the United States need the ability to move out from under the agreement-by-agreement land transaction oversight by the federal government. Given tribes’ experience with both the 628 programs and the TERA program, the following components of a self-determination policy for tribal land management should be considered:

1. Continue supporting those land management authorization processes and programs that tribes chose, for whatever reason, not to assume.

¹⁹ Olquin, James M. Statement to the Senate, Committee on Indian Affairs. *Legislative Hearing on S. 1684, Indian Tribal Energy Development and Self-Determination Act Amendments of 2011*, Hearing, April 19, 2012. Available at: <http://www.indian.senate.gov/hearings/upload/James-Mike-Olquin-testimony041912.pdf>.

2. Create a clear application process that gives tribes the ability to demonstrate their management experience and capacity to operate government programs.
3. Establish a cost-sharing mechanism between the tribes and the Secretary of the Interior to support the functions that tribes are assuming from the federal government.
4. Clarify the federal trust responsibility and how that trust responsibility will be maintained by the Department of the Interior while, at the same time, allowing tribes to manage their own land.
5. Create federal support for education and technical training efforts for tribal youth, veterans, and other citizens to learn the new technologies, resource management, and maintenance skills required to support land management offices and operations.
6. Create a clear “shot clock” approach for federal review of tribal applications, making approval effective after 180 days following submission unless disapproved by the Secretary of the Interior (or the Secretary’s delegate).
7. Clarify that Tribal lands are not “public lands” in order to establish clear lines of authority for all federal programs and regulations.

Legislation

In current legislation, the tribes recommend Congressional support for the rule recently proposed by the Secretary of the Interior to reform federal surface leasing regulations for American Indian lands that should streamline the approval process for home ownership, expedite economic development, and spur renewable energy development in Indian Country. Additionally, tribes encourage Congress to pass the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, H.R. 205, which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands. We hope that applications for the sale of resources will also be given priority treatment in the DOI’s decision-making process.

Tribes are also encouraged by the Senate Committee on Indian Affairs introduction of the Indian Tribal Energy Development and Self-Determination Act Amendments (S.1684) to take advantage of the energy potential on tribal lands. S.1684 would make it easier for tribes to create tribal energy development organizations and enter into tribal energy resources agreements with the Department of Interior so that many existing administrative burdens would be reduced or eliminated, and tribes – not the Department of the Interior – would be the drivers and managers of the energy resources on their lands.

Some changes to clearly discriminatory laws and regulations can be made by acknowledging that tribes, as sovereign nations, have Constitutional standing in the United States not less than that of individual states, and the laws should reflect that.

Carcieri

In February of 2009, the United States Supreme Court issued a decision in *Carcieri v. Salazar* – overturning a longstanding interpretation of the Indian Reorganization Act of 1934 or “IRA” by holding that the phrase “now under Federal jurisdiction” limits the Department of Interior’s authority to provide benefits under the IRA only to those Indian tribes that were “under federal jurisdiction” on June 8, 1934.²⁰ The IRA, passed in 1934, provides not only the authority of the U.S. Secretary of the Interior to restore tribal lands, but also for the establishment of tribal constitutions and tribal business structures. The *Carcieri* decision by the Supreme Court is at odds

²⁰ (No. 07-526) 497 F. 3d 15, reversed.

with Congress's intent to restore tribal self-determination to all Indian tribes regardless of how or when they received federal recognition.

Disorder in this area of the law affects land restoration efforts and economic development as well as contracts and loans, and could negatively affect tribal and federal jurisdiction, public safety, and provision of services on reservations across the country. Legislation that will provide a solution – a “Carcieri Fix”—and clarify the Secretary of the Interior’s authority under the IRA did pass the United States House of Representatives in 2011 and was reported out of the Senate Committee on Indian Affairs unanimously. The “Carcieri Fix” needs to be reintroduced in both the Senate and the House and enacted by Congress to restore the benefits provided by the Indian Reorganization Act and to remove the uncertainty surrounding development and strategic planning in Indian Country.

Conclusion

Overall, tribes are in favor of models like Self-Determination and the Indian Employment, Training, and Related Services Demonstration Act (Public Law 102-477) (“477”) program that permit tribes to design their own programs and services, build tribal capacity, and use federal funding more effectively. This is exactly what tribes should be doing – spending more dollars, effort, and time on services and less on administrative burdens -- especially in areas involving infrastructure and energy development.

Indian tribes recognize the challenges of developing their local economies and providing jobs without the access to funding and basic business tools, like broadband access, that are available to much of the United States outside of tribal lands. NCAI works with Congress and the federal agencies in the United States to ensure tribes are included in developing and paving a way for economic development and job creation in Indian country.