



## From Removal to Recovery: Land Ownership in Indian Country

For Indian people, the concept of land ownership has historically been fraught with contradiction. The idea that land could be bought and sold was philosophically and spiritually incomprehensible to the indigenous people encountered by the European settlers who colonized America. How could something innately sacred, something that is shared in common by all people, living and deceased, be traded like any other asset or commodity? Quotes such as the following from a speech given by Chief Seattle in 1854, reflect this traditional Native perspective on land:

*Every part of this earth is sacred to my people. Every hillside, every valley, every clearing and wood, is holy in the memory and experience of my people. Even those unspeaking stones along the shore are loud with events and memories in the life of my people.*

While these words still ring true for many Indian people today, as history has sadly shown, impassioned speeches by our greatest Indian leaders did little to prevent the systematic taking of Indian land. Each period of American Indian history, from treaty making to removal, reservations, allotment and more recently, termination, has led to a new assault on Indian lands and a diminishment of Indian control over the remaining land base.

Initially, Indian nations were forced to cede vast areas of their land through formal treaties, often in order to avoid war and to maintain peace. Yet these treaties were grounded in international laws and, ostensibly, honored the sovereign status of the participating nations. But as the U.S. grew in population and political power and states came to have more control, many of these early agreements came to be renegotiated or flat-out disregarded. Christian-based ideological concepts, such as the Doctrine of Discovery and Manifest Destiny, heavily influenced American popular and political thought, further undermining the rights and privileges of Native American people. After Congress officially ended treaty-making in 1871, creating “Indian policy” became a function of the U.S. courts and legislative bodies, setting the stage for the abuse of plenary power that has dominated federal Indian land policy ever since.

Until the 1887 General Allotment Act, or Dawes Act (named after the bill’s sponsor Senator Henry Dawes), land on Indian reservations was owned and controlled in common by all of the members of an Indian nation. The Allotment Act divided up reservation lands into individually-owned parcels and forcibly sold the remaining “surplus” land to outside parties. The Allotment Act also created a trust for the remaining Indian lands with the U.S. government as trustee, abrogating control over the management of the land and its assets to the Bureau of Indian Affairs (BIA). Today, the BIA manages somewhere between 56 and 66 million acres of land for Indian people and Indian nations.<sup>1</sup>

In this issue of the *Message Runner*, we choose to

## INDIAN LAND FOR SALE

GET A HOME  
OF  
YOUR OWN  
\*  
EASY PAYMENTS



PERFECT TITLE  
\*  
POSSESSION  
WITHIN  
THIRTY DAYS

### FINE LANDS IN THE WEST

IRRIGATED  
IRRIGABLE

GRAZING

AGRICULTURAL  
DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

Location.	Acres.	Average Price per Acre.	Location.	Acres.	Average Price per Acre.
Colorado	5,211.21	\$7.27	Oklahoma	34,664.00	\$19.14
Idaho	17,013.00	24.85	Oregon	1,020.00	15.43
Kansas	1,684.50	33.45	South Dakota	120,445.00	16.53
Montana	11,034.00	9.86	Washington	4,879.00	41.37
Nebraska	5,641.00	36.65	Wisconsin	1,069.00	17.00
North Dakota	22,610.70	9.93	Wyoming	865.00	20.64

Throughout the course of U.S. history, land has been taken from Indian people by forced land cessions, fraudulent dealings, land grabs, executive rulings and legislative acts. This broadside was printed just a few years after the Burke Act of 1906, which resulted in the loss of 27 million acres of Indian land.

examine this history, alongside some of the American interests that have driven Indian land losses (westward expansion, industrial development, the discovery of natural resources) in order to gain a better understanding of our current situation.

Many people I talk to about Indian land tenure are surprised to learn that not all reservation land is owned by Indian people. In fact, more than half of the land on Indian reservations in the U.S. is privately-owned and controlled by non-Indians, even though these lands were guaranteed for the “exclusive use and occupation” of Indian people through treaties and other agreements. As a result, Indian people do not have free access to these lands, some of which contain important cultural and sacred sites. Additionally, the considerable income derived from these privately-owned lands ends up going off of the reservation instead of returning to the Indian communities that need it most.

Most of the reservation land that is owned by Indian people is held in trust for them by the BIA. Unfortunately, gross mishandling of the trust system has led to the loss of millions (some have argued billions) of dollars in income, mostly from improperly managed agricultural, forestry and mineral leases on these lands and the resulting proceeds. Because of serious problems that result from the current trust

system, such as severely fractionated land title and lack of assistance for estate planning, the vast majority of Indian landowners never even see the land they own, and decisions about managing their lands are commonly made without their consent.

Despite these challenges, Indian nations are now taking proactive steps to regain control over their homelands by repurchasing alienated lands, improving existing tribal land management systems, documenting and preserving tribal land histories and advocating for legal reform on a national level. Indian landowners are empowering and educating themselves through newly-formed landowners associations throughout Indian Country and are seeking ways to preserve their lands for future generations. Many committed and talented Indian organizations are also taking the lead in critical areas such as education, land rights, economic development and environmental protection.

Now is the time to rebuild and strengthen our land base so that full ownership and control of Indian land returns to, and remains in, Indian hands.



Cris Stainbrook, President  
Indian Land Tenure Foundation

<sup>1</sup> A 2003 Department of the Interior report stated that 56 million acres of land were held in trust by the BIA. The BIA now states on its website that 66 million acres of land are held in trust—a 20 percent increase in just six years—but it has yet to publicly release an official accounting of these new data.



## Pre-Contact

Prior to European contact, Indian nations occupied and used all of the more than 2.3 billion acres of land that comprise the modern day United States. Collective tribal land ownership and shared resources were the foundations of American Indian culture. They provided a means to build strong tribal communities that were effective in their efforts to govern, protect, meet basic needs and maintain culture.

Most often Indian nations occupied specific land areas, even if these were spread out over a vast region, which they considered their homelands. Great Plains tribes, for example, traveled great distances seasonally for hunting and gathering and for ceremonial and social purposes, though they generally returned to the same areas within their extensive tribal territories. At the same time, there was frequently overlap of land occupation by different tribes, making reliable information about the structure of traditional tribal land ownership hard to come by.

Research in this area is also complicated by the fact that tribes had a broad range of lifestyles. While most Indian nations held and occupied land in common, sharing resources among tribal members according to traditional practices and customs, there is evidence that Indian families or groups within nations had a right to use specific lands for hunting, living, farming or ceremonial use. Some agriculturally-based tribes, such as the Hopi in the Southwest, emphasized the clan as the fundamental social unit of land ownership. On the whole, perceptions about the tribal “land base” or “land rights” were influ-



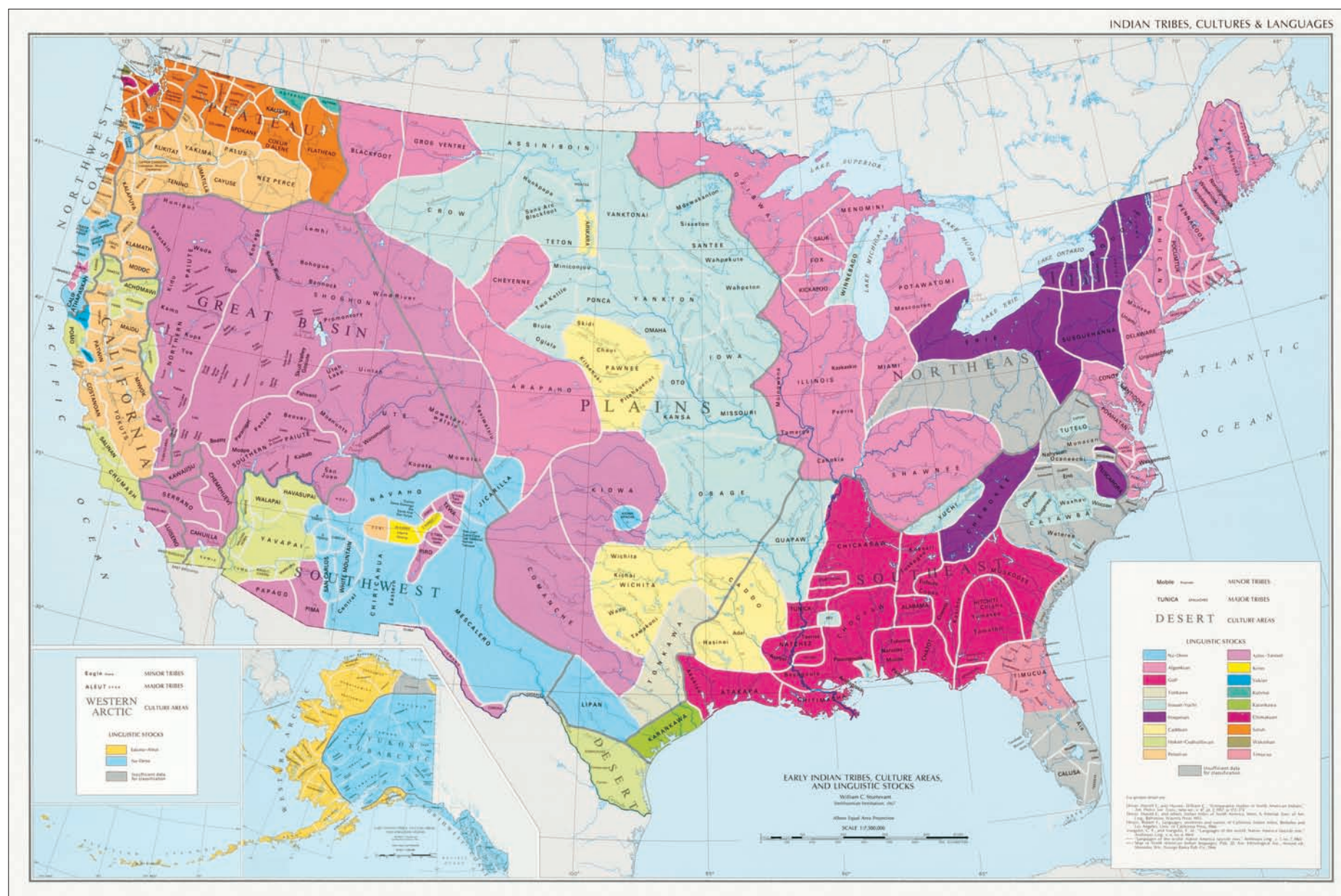
*Bison grazing near Bear Butte in the traditional homelands of the Sioux.*

enced by whether a tribe had a more nomadic or agrarian way of life.

However, the idea of land “ownership” by individuals that colonists brought with them was foreign to Indian nations. European conceptions of land as a transferable asset, with an emphasis on its exploitation for monetary gain, conflicted with the Native

philosophy of respectful occupation and use of the land and what it yielded as gifts from the creator.

While Indian nations have been pressured to conform to many of these new ways in the past few centuries, the philosophical and spiritual underpinnings of these colonial practices and beliefs remain unacceptable to many Indian people today.



*Because knowledge of tribal areas was acquired by European colonists at different times in different regions, this map contains information about tribal occupancy ranging from the mid-17th century in the East to the late-19th century in the West. As such, it is shaped by some migration and demographic shifts that occurred after contact. Despite its imperfections, it is a relatively good approximation of traditional aboriginal land areas in the U.S. From the National Atlas of the United States of America (1970).*



# The Treaty-Making Era

Indian nations negotiated land deals with explorers and “discovering” countries from the time of initial contact, but formal treaty-making with the United States began in earnest in the late 1700s. The first official treaty was negotiated in 1778 between the U.S. government and the Delaware Nation, affirming “perpetual peace and friendship” between the two. Early treaties were negotiated on a nation-to-nation basis, but it was not long before the newly formed U.S. government started to aggressively pursue the acquisition and control of Indian lands. This period of treaty making between Indian nations and the U.S. government continued for the next 100 years with profound consequences for Indian land ownership.

The roots of treaty-making in the United States came from traditional European practices of using treaties as a means of diplomatic negotiation between two sovereign nations, carried out by officially designated individuals and ratified by the governments involved. Treaties were often used to reinforce or formalize political, economic and social relationships between nations, and most began with a promise of peace. Early treaties provided legally-based government-to-government agreements meant to guarantee the tribe’s retention of certain rights and privileges, such as land use and occupation rights, concepts that were formally expressed in the Northwest Ordinance of 1787 (see sidebar). Despite their diplomatic overtones, more often than not, treaties changed or reduced the Indian nation’s land base, displaced tribal members and confined tribal members unwillingly within identified boundaries.

The federal government secured its role as the sole entity with the power to negotiate treaties with Indian nations through Article I, Section 8 of the U.S. Constitution, or the Commerce Clause. This gave Congress the exclusive authority to “regulate commerce with foreign nations and among the several States and with the Indian tribes.” In 1790, Congress adopted the Act to Regulate Trade and Intercourse with the Indian Tribes, the first of several such acts specifically governing commerce with Indian nations and travel by non-Indians onto Indian land. The Act established the federal government’s preemptive right to purchase Indian lands, excluding states or other entities from the right to negotiate to

## Northwest Ordinance of 1787

The Northwest Ordinance of 1787 was intended to define the nature of U.S. relations with tribes. It served to open up new areas for settlement north of the Ohio River and west of the Mississippi River by laying the foundation for treaties with Indian nations and the acquiring of new land. It stated that: “The utmost faith shall always be observed toward Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed unless in just and lawful wars authorized by Congress.” Ultimately, the Northwest Ordinance accelerated the westward expansion of the U.S. and, despite the Ordinance’s lofty ideals, few people today would agree that these principles were consistently applied in the process.

## WANTED! Perry Fuller, Treaty Signer

Perry Fuller was a notoriously corrupt Kansas Indian agent and treaty signer. Early in his career, he fraudulently acquired vast tracts of land from an Osage land cession where he attempted to relocate the territorial capital and name it “Centropolis.” In the end, the deal fell through, but Fuller was later appointed Indian agent and began to divert goods and government payments intended for several tribes to his own personal use. Despite becoming the subject of a Supreme Court case as a result of his illegal activity, Fuller continued to hold influential government positions and sign treaties on behalf of the U.S. government.

## A Family Affair

Overall, approximately 2,600 individuals—many of them linked to powerful families—negotiated treaties on behalf of the U.S. government. Just ten families, with financial ties to land speculation, mining, fur trading, agriculture, transportation and other corporate interests, account for more than one fourth of all the signatures on the nearly 400 ratified treaties with Indian tribes. Using their extensive kinship networks and exploiting their business connections in Indian Country, treaty signers pursued personal gain in U.S.-Indian relations by manipulating treaty boundaries, establishing beneficial trade agreements, forging real estate deals under the table during treaty negotiations, receiving bribes to open Indian land for corporate purposes, and receiving kickbacks for making government treaty payments directly payable to Indian traders. In the process, the treaty signers secured for themselves and their families hundreds of millions of acres of land and vast fortunes. While a handful of American families were getting rich on land they may never set foot on themselves, hundreds of Indian nations were ceding to the U.S. government, for next to nothing, ancestral homelands where they had lived for thousands of years.



purchase land. Indian nations maintained title to and exclusive jurisdiction over their lands, but they could not sell land to whomever they wished.

As the U.S. expanded, treaties became the primary method for the federal government to deal with Indian nations and, consequently, to acquire their land. Tribes were reluctant to cede lands, but were increasingly pressured to do so as treaties began to formally define “Indian territory” and the political and legal relationship between Indian nations and the U.S. government.

## Treaties Establish Indian Territories

Early treaties established and adjusted territorial boundaries between tribal land and the United States and even between Indian nations. Treaties, war and the threat of war became the means through which the U.S. was able to persuade Indian nations to extinguish title to their increasingly sought after lands. As the federal government pursued land cession treaties with tribes, Indian homelands in the East began to diminish. Initially, land acquisition treaties were concentrated in the Northeast and Southeast, but the Louisiana Purchase of 1803 opened up vast territory—14 current

U.S. states and more—and introduced a number of new Indian nations to the federal government for land negotiations.

It is important to note that in its “purchase” of the Louisiana Territory, the U.S. bought only what claim France had to these lands. That is, the Louisiana Purchase merely transferred, from the French to the U.S., the right to negotiate treaties with Indian nations—it **did not transfer free and clear title to these lands**. In part due to a general lack of understanding about this distinction and in part due to outright disregard, friction arose between Indian nations and emerging state governments as states exercised their new powers. State and local governments regularly failed to recognize the sovereign nation status of tribes and attempted to impose their laws upon them, setting the stage for many of the jurisdictional conflicts that still exist today.

Some conflicts eventually advanced to the higher courts. In the 1883 case *Ex Parte Crow Dog*, for example, the Supreme Court ruled that the murder of one Indian by another within Indian Country was not a criminal offense punishable by the United States. According to the ruling, Indian tribes in their territory were free of regulation by other sovereign gov-



The Black Hills Are NOT for Sale

In the 1868 Treaty of Fort Laramie (also called the Sioux Treaty), the U.S. government guaranteed the ownership of the Black Hills to the Lakota (Teton Sioux). Other members of the Sioux Nation also claimed spiritual and cultural connections to the Black Hills and continued to occupy these lands along with the Lakota. But after gold was discovered there in 1874, the government changed its mind. Congress, without consent of the Lakota, passed a law in 1877 reclaiming the land and relocated tribes living in the Black Hills to other reservations. After over 100 years, on July 23, 1980, in *United States v. Sioux Nation of Indians*, the Supreme Court of the United States ruled that the Black Hills were illegally taken and that payment of the initial offering price plus interest—nearly \$106 million—be paid. The Sioux Nation refused the settlement, as they wanted the return of the Black Hills instead. The money remains in an interest-bearing account which now amounts to over \$900 million. Despite high levels of poverty on the reservation, surveys reveal more than 90 percent of Lakota people support the tribes’ stand.

Continued from page 3

ernments absent explicit direction from Congress. However, two years later, in response to Crow Dog, Congress passed the Major Crimes Act, extending federal criminal jurisdiction over major crimes to Indian Country.

Explosive immigrant population growth created competition for Indian land and resources in the East and South. Loss of tribal land was also fueled by pressure from expansionists and land speculators who found ways to exploit treaty negotiations and the government protections that were designed to help Indian nations retain their land and way of life (see sidebar). Hence, a combination of political, social and economic influences accelerated land loss for tribes throughout the country.

1830s: Treaties Turn to Removal

The pace of government acquisition of Indian land increased under President Andrew Jackson’s removal policy. During his presidency from 1829 to 1837, 67 treaties were ratified, most including land cessions. The Indian Removal Act of 1830 facilitated a wave of treaty-making that focused on the exchange of tribal lands in the East for “comparable” land west of the Mississippi River over which the Indian nation would be guaranteed “exclusive use and occupation.” Treaty payments for land cessions included land, annuities and supplies—the latter two being critical for ongoing tribal survival. A dramatic reduction in the land base and a relocation to largely barren regions greatly minimized opportunities for hunting and traditional food gathering, the primary means of acquiring food and goods for most Indian nations. Many tribes felt forced to comply with treaties as trade and delivery of supplies often hinged on their cooperation in treaty-making.

Eventually the land bases of the southeastern nations—Choctaw, Creek, Chickasaw, Cherokee—were largely alienated as their members were forced west in 1838 to the Indian Territory that is now the State of Oklahoma. During this forced relocation, referred to as the Trail of Tears, thousands of Indian people lost their lives due to disease, exposure and starvation. The Cherokee alone lost 4,000 tribal members—nearly a quarter of their

# GRAND RUSH

FOR THE

# INDIAN

# TERRITORY!

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## NOW IS THE CHANCE

TO

## PROCURE A HOME

*In this Beautiful Country!*

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## Over 15,000,000 Acres of Land

### NOW OPEN FOR SETTLEMENT!

Being part of the Land bought by the Government in 1866 from the Indians for the Freedmen.

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### THE FINEST TIMBER!

### THE RICHEST LAND!

### THE FINEST WATERED!

### WEST OF THE MISSISSIPPI RIVER.

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Every person over 21 years of age is entitled to 160 acres, either by pre-emption or homestead, who wishes to settle in the Indian Territory. It is estimated that over Fifty Thousand will move to this Territory in the next ninety days. The Indians are rejoicing to have the whites settle up this country.

**The Grand Expedition will Leave Independence May 7, 1879**

Independence is situated at the terminus of the Kansas City, Lawrence & Southern Railroad. The citizens of Independence have laid out and made a splendid road to these lands; and they are prepared to furnish emigrants with complete outfits, such as wagons, agricultural implements, dry goods, groceries, lumber and stock. They have also opened an office there for general information to those wishing to go to the Territory. IT COSTS NOTHING TO BECOME A MEMBER OF THIS COLONY.

Persons passing through Kansas City will apply at the office of K. C., L. & S. R. R. opposite Union Depot, for tickets.

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### ABOUT THE LANDS.

In answer to inquiries concerning these governmental lands in the Indian Territory, Col. E. C. Bondnot sends the following from Washington:

First.—In reply it will say that the United States, by treaties made in 1866, purchased from Indian tribes, in the Indian Territory, about 11,000,000 acres of land.

Second.—These lands were bought from the Creeks, Seminoles, Choctaws and Chickasaws, by their treaty of 1866.

The Creeks, by their treaty of 1866, sold to the United States 3,250,760 acres, for the sum of \$975,168. The Seminoles, by their treaty of 1866, sold to the United States 2,169,080 acres, for the sum of \$325,362.

The Choctaws and Chickasaws, by their treaty of 1866, sold to the United States the "leased lands" lying west of 98 degrees of west longitude, for the sum of \$400,000. The number of acres in this tract is not specified in the treaty, but it contains about 7,000,000 acres. (See 14th vol. Statutes at Large, pages 736, 760 and 784.)

Of these ceded lands the United States has since appropriated for the use of the Sac and Foxes 479,567 acres and for the Pottawatomies 575,877 acres, making a total of 1,055,444 acres. These Indians occupy these lands by virtue of treaties and acts of Congress. By an unratified agreement, the Wichita Indians are now occupying 753,640 acres of these ceded lands. I presume some action will be taken by the United States government to permanently locate the Wichitas upon the land they now occupy. The title, however, to these lands is still in the United States.

By executive order, Kiowa, Comanche, Arapahoe, and other wild Indians, have been brought upon a portion of the ceded lands, but such lands are a part of the public domain of the United States, and have all been surveyed and sectioned.

A portion of these 11,000,000 acres of land, however, has not been appropriated by the United States for the use of other Indians and all probability never will be.

THIRD.—These unappropriated lands are situated immediately west of the 97th degree of west longitude and south of the Cherokee territory. The soil is well adapted for the production of corn, wheat and other cereals. It is unsurpassed for grazing, and is well watered and timbered.

FOURTH.—The United States have an absolute and unembarrassed title to every acre of these 11,000,000 acres, unless it be to the 1,054,544 now occupied by the Sac and Fox and Pottawatomie Indians. The Indian title has been extinguished. The articles of the treaties with the Creeks and Seminoles, by which they sold their lands, begin with the statement that the lands are ceded "in compliance with the desire of the United States to locate other Indians and freedmen thereon." By the express terms of these treaties the lands bought by the United States were not intended for the exclusive use of other Indians" as has been so often asserted. They were bought as much for the negroes of the country as for Indians.

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### ADDRESS

## WM. C. BRANHAM,

### Independence, Kansas.

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To parties accompanying my Colony, I would advise them to purchase their outfit at Independence, Kas., I have examined Stock and Prices of Goods, such as Wagons, Plows, Lumber, Dry Goods, Groceries, and, in fact, everything that is needed by Parties settling upon new Land, and find them as cheap as they can be bought in the East.

RESPECTFULLY YOURS,

## Col. C. C. CARPENTER.

P. S. —Parties will have no trouble in getting transportation at Independence for hauling their goods into the Territory.

O. O. C.

Flyers like this one encouraged white settlement of the West, emphasizing the land's fertility and beauty. They also glossed over any unfair dealings with the Indian tribes whose land they advertised. This ad, for example, advertises lands in the Indian Territory (now Oklahoma) that in treaties with the Creeks, Seminoles, Choctaws and Chickasaws the U.S. agreed would be exclusively used for “other Indians and freedmen.” It also disingenuously proclaims: “The Indians are rejoicing to have the whites settle up this country.”

tribal membership. In the end, the Seminoles, who lived in what is now Florida, also had to relinquish their lands and relocate to the Indian Territory, but they are especially proud of never having signed a removal treaty. Eventually most Seminoles were removed by force but not for another 20 years and only after a series of hard-fought wars with the U.S.

In 1871, Congress officially abolished the practice of treaty-making with Indian nations. This change stated that the U.S. would no longer acknowledge any Indian nation as an “independent nation, tribe or power with whom the United States may contract by treaty.” Over the century of treaty-making between Indian nations and the federal government, the

process had repeatedly been manipulated to serve the interests of the U.S.—to acquire more land for settlers, railroads and businesses.

Unfortunately, the U.S. government has historically failed to live up to many of its treaty obligations. A few cases have received public attention, such as the federal government’s promise of the Black Hills to the Lakota in the 1868 Treaty of Fort Laramie (see sidebar). However, these treaties negotiated decades ago, remain the “supreme law of the land” under the U.S. constitution. Indian nations still look to these original treaties to assert and defend their rights to their reserved lands and the associated natural resources contained within them.

In the President’s Words...

“Your father has provided a country large enough for all of you, and he advises you to remove to it. There your white brothers will not trouble you; they will have no claim to the land, and you can live upon it, you and all your children, as long as the grass grows or the water runs, in peace and plenty. It will be yours forever.”

President Andrew Jackson, 1829



# The Marshall Trilogy

## Three Supreme Court Decisions that Shaped American Indian Land Law and Policy

While treaty-making between the U.S. government and Indian nations progressed during the early 19th century, federal Indian policy continued to be shaped by judicial decisions and legislation that defined Indian rights and sovereignty. These decisions, especially those of the Marshall Trilogy, had far reaching consequences for Indian land ownership. A significant setback for tribal land ownership status came from the first of three Supreme Court decisions called the Marshall Trilogy, named for then Chief Justice John Marshall. In the first case in 1823, *Johnson v. McIntosh*, the Court ruled that Indian tribes could not convey land to private parties without the consent of the federal government, “discoverers” under the international concept of the “Doctrine of Discovery” (see sidebar). The Court reasoned that the connection between European conquests and the establishment of the United States necessarily diminished the sovereignty of Indian nations and limited their power to dispose of their land. While the ruling did help protect Indian nations from state claims to their lands, it also held that tribes could only sell their lands to the federal government and that as “discoverer” the U.S. government alone had the power to extinguish a tribe’s “right of occupancy.”

It’s not surprising that on the heels of the *Johnson* decision, President Andrew Jackson signed the Indian Removal Act in 1830, giving the president the power to negotiate land cession treaties. Prior to its passage, a debate about removal policy was waged in Congress. Some argued that the Doctrine of Discovery conferred to the U.S. only preemptive rights to purchase land voluntarily offered for sale by Indian nations. Those same proponents also argued that Indians, as original occupants, held exclusive title to their lands. Others, like President Jackson, disagreed on both counts. Ultimately, Jackson’s view prevailed, thus beginning a dark period in America’s history of forced removal.

Two subsequent Supreme Court cases, the second and third in the Marshall Trilogy, originated from conflicts between the Cherokee Nation and the State of Georgia. These decisions further influenced interpretations of the land rights and sovereignty of Indian nations. In 1831, *Cherokee Nation v. Georgia* labeled tribes as neither citizens nor independent nations, but rather as “domestic dependent nations,” and “wards of a guardian”— that guardian being the federal government. This definition adversely impacted Indian land rights by undermining sovereign nation status and suggesting that Indian tribes had limited title to their lands. The Court also held that tribes had a right to the lands they occupied, and that those lands could only be sold to the federal government and not to any other nations, states or private parties. The law stipulated that tribes would not be forced to sell their lands, but that any future sales would be voluntary. History shows, however, that these sales were very rarely completely voluntary. On the whole, the case served to reinforce the paternalistic policies of the U.S. According to some scholars,

### The Doctrine of “Christian” Discovery

The Doctrine of Discovery is a concept of international law that said a “discovering” European and “Christian” country had a priority over other Christian countries in negotiating for land with indigenous peoples who held that territory. These negotiations could be in the form of treaties, purchases or “just wars.” The United States reinterpreted this Discovery Doctrine to diminish indigenous land rights to rights of “occupancy” and the underlying title to lands magically passed to the discovering European country.

According to the United States Supreme Court’s decision in *Johnson v. McIntosh*, this theory of Christian expansion and possession of newly discovered lands, despite Native presence, was one by which all colonial powers operated. Chief Justice Marshall, writing the decision, held that the United Kingdom had taken title to the lands which constituted the United States when the British discovered them. The tribes which occupied the land were, at the moment of discovery, no longer completely sovereign and had no property rights but rather merely held a right of occupancy. Natives could not sell the land to private citizens but only to the discovering government. The Doctrine was also used in the second case in the Marshall Trilogy—*Cherokee Nation v. Georgia*—where it supported the concept that tribes were not independent states but “domestic dependent nations.”

*Cherokee Nation v. Georgia* laid the foundation for the trust relationship between the federal government and Indian tribes that was more formally established after the General Allotment Act of 1887.

In 1832, the decision in *Worcester v. Georgia* supported the notion of tribal sovereignty over state jurisdiction and held that Georgia state law had no effect in Cherokee Territory. The Court held that tribes had jurisdiction over lands within the boundaries of their homelands. This decision reinforced the federal government’s duty to protect tribes from state government action but it also made way for the federal government abuses of power such as forced sales and congressional actions that superseded tribal authority and undermined tribal sovereignty.

Despite their references to ideology that the American public has long since abandoned, these cases continue to be cited today in defense of the federal government’s historical policies and actions in regard to ownership of Indian land. The *Johnson v. McIntosh* decision has been cited repeatedly to justify additional acquisition of aboriginal lands for white settlement under the guise

of the Doctrine of Discovery.

The Marshall Trilogy forms the basis, albeit misguided, for the consistent reliance on “well-founded” principles of Indian law. The Trilogy does provide insight into the historical development of the federal government’s treatment of Indian people.



# The Reservation Era

By the 1850s, federal Indian policy was focused on creating reservations. For some Indian nations this meant reducing their land bases to areas in their original homelands they had “reserved” through treaty when they ceded other lands, such as the tribes of the Great Sioux Nation. The southeastern tribes, however, gained ownership of new land in Oklahoma in exchange for land they had been forced to relinquish in the East. Others still secured their reservations through executive order rather than treaty, though the rights of title and ownership were essentially the same as with treaty tribes.

The 1851 Indian Appropriations Act formalized the reservation system, allocating funds to relocate tribes to established reservations. As the federal government rapidly acquired land, the West, once thought of as a vast and unlimited land base large enough to accommodate all tribes, was beginning to fill up. White settlers pushed westward and cov-

### In the Commissioner’s Words...

*Reservations are “adapted to agriculture, of limited extent and [have] well-defined boundaries; within which all [Indians], with occasional exceptions, should be compelled constantly to remain until such time as their general improvement and good conduct may supersede the necessity of such restrictions.”*

*Commissioner of Indian Affairs, Orlando Brown, 1850*



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eted the large tracts of land that comprised the Indian reservations.

Through the 1880s, the reservation lands were held communally under tribal ownership. This was thought by some non-Indians to be an ineffective use of land. The paternalistic policies of the U.S. government wanted Indian people to be productive and “well-behaved” citizens that would not pose a threat to American westward expansion. They also saw collective ownership on reservation lands as a major obstacle to assimilation into American life and culture. This prevailing sentiment laid the ground work for a massive shift in Indian land ownership from collective ownership of tribal lands to allotment of parcels of land to individual Indians. This practice had already begun as a component of some treaties, but was formalized and expanded with the signing of the General Allotment Act in 1887, changing and complicating the course of Indian land ownership for generations.



Michael Korutua Johnson

*During the Reservation Era, many Indian nations were relocated to unfamiliar, barren regions and forced to live within contained boundaries, under strained conditions, and sometimes alongside hostile tribes. Those who remained on reservations in their tribal territories only did so after ceding the vast majority of their original homelands.*

## The Allotment Era

By the 1880s, the citizens of most Indian nations were living on reservations either within their traditional homelands or on land that was set aside for them in exchange for the sale or taking of original homelands. Collective tribal land ownership in the United States at this time was estimated at 138 million acres.

Tribal ownership of Indian land was the norm on most reservations, but was regarded by many non-Indians as an unproductive use of resources and a hindrance to civilizing Indian people. At that time, however, the allotment of land to individual Indians and families had already begun. As early as 1798, some treaties between the government and tribes included provisions to allot land parcels to individual members of the tribe. Between 1830 and 1880, 67 different tribes were given the opportunity to receive allotted lands, yet fewer than five percent chose to accept allotment of their reservations. Later, plans for allotment designed by Indian agents were required through Acts of Congress and executive orders. Many of these allotted lands were eventually alienated into the hands of white settlers.

Support for a federal policy to promote individual Indian ownership of land gained momentum through the 1870s and 80s. Those behind the movement wanted Indian people to take up agriculture, break away from their tightly-knit tribal families and adopt the “civilized” lifestyle of white settlers. Many also believed Indian nations occupied too much land; they were eager to see those lands opened up for settlement, railroads, mining or forestry. The result was passage by Congress of the General Allotment Act, also called the Dawes Severalty Act, in 1887.

The Allotment Act expanded and formalized the policy of individual Indian land ownership by dividing up reservation lands into 40 to 160 acre parcels that were allotted to individual Indians to pursue their own livelihoods, unraveling centuries of tribal communal land ownership. The U.S. President



*The policy of allotment dramatically and permanently altered U.S. Indian land tenure. Lands previously held in common by all tribal members were divided into 160-, 80- and 40- acre parcels and allotted to individual tribal members and families. Lands in excess of reservation needs were declared “surplus” and sold or distributed to outside, non-Indian parties.*

was given discretion to apply the Allotment Act on reservations where he believed it would benefit the tribe. Additionally, lands that were not allotted, and in some cases this amounted to three quarters or more of the reservation acreage, were declared “surplus to Indian needs.” Tribes were forced to cede those excess lands—often the most desirable or agriculturally rich lands—to the federal government for nominal payment. The government opened much of that land to non-Indian homesteaders, or sold it to railroads or corporations, and eventually converted some to national forest and park land and military facilities. An estimated 60 million acres were alienated after being declared “surplus” on allotted reservations.

### Federal Trust System Established

This new system of allotment did not confer customary land ownership status in the sense of holding the title, however. The Act first held that all Indian people and tribes were incompetent to handle their land ownership, management and related decisions. Therefore, the federal government held the title to the land in trust for the allottee, who was given beneficial use of the property. Trust status meant that the federal government held title to that parcel of land (initially for a period of 25 years, though this was later extended indefinitely) during which time the Indian allottee would be prohibited from selling or leasing the property without government approval.

With the stroke of a pen, Indian land ownership

*Continued on page 7*



Continued from page 6

had passed from tribal ownership to an underlying federal ownership by the unilateral action of the United States government and without just compensation—and in many cases without the Indian nation’s consent. Lands that had previously been owned and controlled by the Indian nation as a whole were now divided up and owned by individual tribal members.

Indian nations were wary of allotment, fearing, rightly, that it would be yet another attack on tribal self-determination and would result in further loss of control over their remaining homelands. In the end, most tribes succumbed to allotment, but some resisted. The Yankton Sioux, for example, only accepted allotment after the Indian agent for the reservation threatened military force. Some tribes, such as the Chippewa on the Red Lake Indian Reservation in Minnesota, successfully avoided allotment of their lands (see sidebar).

The long term effects of the Allotment Act became evident within a generation or two. Not only were 60 million acres lost at the outset through the lands declared surplus, but individual ownership was soon compromised when lands passed to subsequent generations without the deceased allottee having written a will specifying land inheritance. Unless land heirship was delineated through a will, which was very rarely the case, parcels of land remained intact but the ownership title was divided among heirs. Soon allotments were owned collectively by all of the original allottee’s heirs, creating the problem of fractionated land title, or fractionation. These multiple landowners possessed undivided interests in a single parcel of land, with ownership multiplying exponentially with each generation.

As reservation land was alienated in multiple ways, checkerboarding, or patterns of mixed land ownership on reservations, also emerged as a result of allotment. Land ownership on a single reservation might include individual trust land, tribal trust land, non-Indian fee land, federal and municipal land, all existing side-by-side, creating jurisdictional issues and limitations for land use.

Red Lake Fights Allotment, Keeps Tribal Control

Today, the Red Lake Band of Chippewa Indians controls 564,426 acres in Northern Minnesota and Canada. The Red Lake Indian Reservation contains 407,730 acres of tribal land and 229,300 acres of surface water on two lakes, one of which, Lower Red Lake, is entirely under the Band’s control. The Band holds an additional 156,696 acres of land, scattered throughout nine different counties in Minnesota and Canada, which was returned to the Band after 1934. The Band has jurisdiction to regulate hunting and fishing on these lands as well as those that are contained with the reservation boundaries.

During the late 19th and early 20th centuries the Red Lake Band ceded lands like other tribes, but through skillful and determined negotiations during the 1889 Nelson Act, the Band was able to resist allotment legislation and keep the main reservation intact for the Band to use as a whole. As a result, Red Lake is relatively unique in that the tribal government has full sovereignty over the reservation, subject only to federal legislation specific to Red Lake, which makes it a "closed" reservation. The Band has the right to limit who can visit or live on the reservation and it has never been subject to State law. While the federal government is responsible for major criminal matters, as specified in federal law, the Band has jurisdiction in all other criminal and civil matters affecting the Band. In 1997, the Band began administering its own programs under a Self-Governance Contract with the BIA.

In recent years, Red Lake has focused on protecting and preserving its walleye population, which is both culturally and economically significant to the Band. Since the early 20th century, the Red Lake Band has operated a commercial walleye fishery, which has historically provided steady income and an important food source for its tribal members. In the mid-1990s, however, the walleye population plummeted, and the Band decided to take full control over the management of its walleye stocks from the BIA. As a result of the Band’s highly successful walleye recovery program, the walleye population has rebounded and the past few seasons have seen some of the highest walleye populations in years.

Having full control over its land base and natural resources has allowed Red Lake to successfully manage its own affairs without interference from the federal and state governments and to achieve a much greater degree of economic and political independence.



An official deed for land purchased under the provisions of the Land Act of 1820. This Act, which made it easier for white settlers and land speculators to purchase lands in the Northwest and Missouri Territories, was just one of countless pieces of legislation that contributed to the illegal confiscation of Indian lands.

The Burke Act

Congress expanded the avenues for tribal land loss further in 1906, amending the Allotment Act and prematurely ending the 25-year trust period with passage of the Burke Act. The Burke Act authorized the Secretary of the Interior to grant a patent in fee simple—making a trust-to-fee conversion—if he determined that an allottee was “competent” to manage his or her land. Once granted, the fee land was subject to taxation and could be sold by the allottee. The Burke Act also gave the Secretary of the Interior power to determine the legal heirs of a deceased Indian landowner.

In practice, this change in land title from trust-to-fee frequently occurred without the Indian landowner’s consent or knowledge that he or she had been

declared “competent.” For example, many Native American soldiers who fought in World War I were declared “competent” while fighting overseas and were unknowingly issued “forced fee patents.” Many of these Native veterans returned home from the war to find that they had lost their land for failure to pay taxes they did not even realize were owed. Many of those lands were in turn sold to non-Indians by local governments. An estimated 27 million acres were lost due to forced fee patents and other sales as a result of the Burke Act.

Consequences of Allotment

During the nearly 50 years of the Allotment Era (1887-1934), 118 reservations—more than half of all existing reservations in the U.S.—were allotted. The Indian land base was reduced from nearly 138 million acres to less than 48 million. In all, two-thirds of tribal land was alienated. Of the 60 million acres declared surplus, approximately 22 million acres were opened to homesteading and 38 million were ceded to the federal government. Another 30 million were lost by subsequent sale or dispossession through both legal and illegal means. As a result, on most reservations today in the West, less than 50 percent of the land is owned by the Indian nations or Indian people to whom the federal government had guaranteed “exclusive use and occupation.”

The Allotment Era resulted in Indian Country’s most significant loss of land after reservations had already been established—90 million acres alienated. In addition, the practice of allotting and alienating tribal lands created a web of ownership issues—including fractionation and checkerboarding—that have severely hindered land ownership, use and management on reservations since that time. This era has resulted in a dramatic change in land ownership throughout Indian Country that continues today. Allotment caused tribal communal lifestyles to deteriorate and resulted in a large, scattered population of landless Indians.

# Major Issues Affecting Ind

The four primary issues that impact Indian land ownership today are: land loss, checkerboarding, fractionation and the trust relationship Indian nations have with the federal government. (You can learn more about each of these issues in the pages of this *Message Runner*.) Multiple problems stem from each of these root causes and most of these problems originate from more than just one root cause. We recognize that these complex and

## LOSS OF RESOURCES

From the beginning, U.S. Indian policy has centered on displacing Indian people and gaining access to their land and resources. Forced land cessions, treaties, allotment and subsequent takings of Indian land have resulted in the loss of Indian control over timber, minerals, gas, water, agricultural and other valuable natural resources. Non-Indian and federal management and control of a large portion of these resources, even those within existing reservation boundaries, has led to the loss of billions of dollars in income for Indian people.

## LOSS OF ACCESS TO CULTURAL AND SPIRITUAL SITES

As a result of colonization and subsequent Indian land losses, Indian people no longer have access to many spiritually and culturally significant places. For thousands of years, Indian people visited specific places to honor ancestors, participate in religious ceremonies, hunt, fish and harvest wild foods. Many treaties include special rights and privileges for tribal members to use lands for traditional purposes, but oftentimes these treaty rights are ignored or overlooked by private landowners and local authorities. Sadly, many sacred and culturally significant places have been permanently destroyed. Some off-reservation sites are now tourist destinations, and Indian nations have to continually fight to protect them from desecration and over use.

## LOSS OF CULTURAL IDENTITY

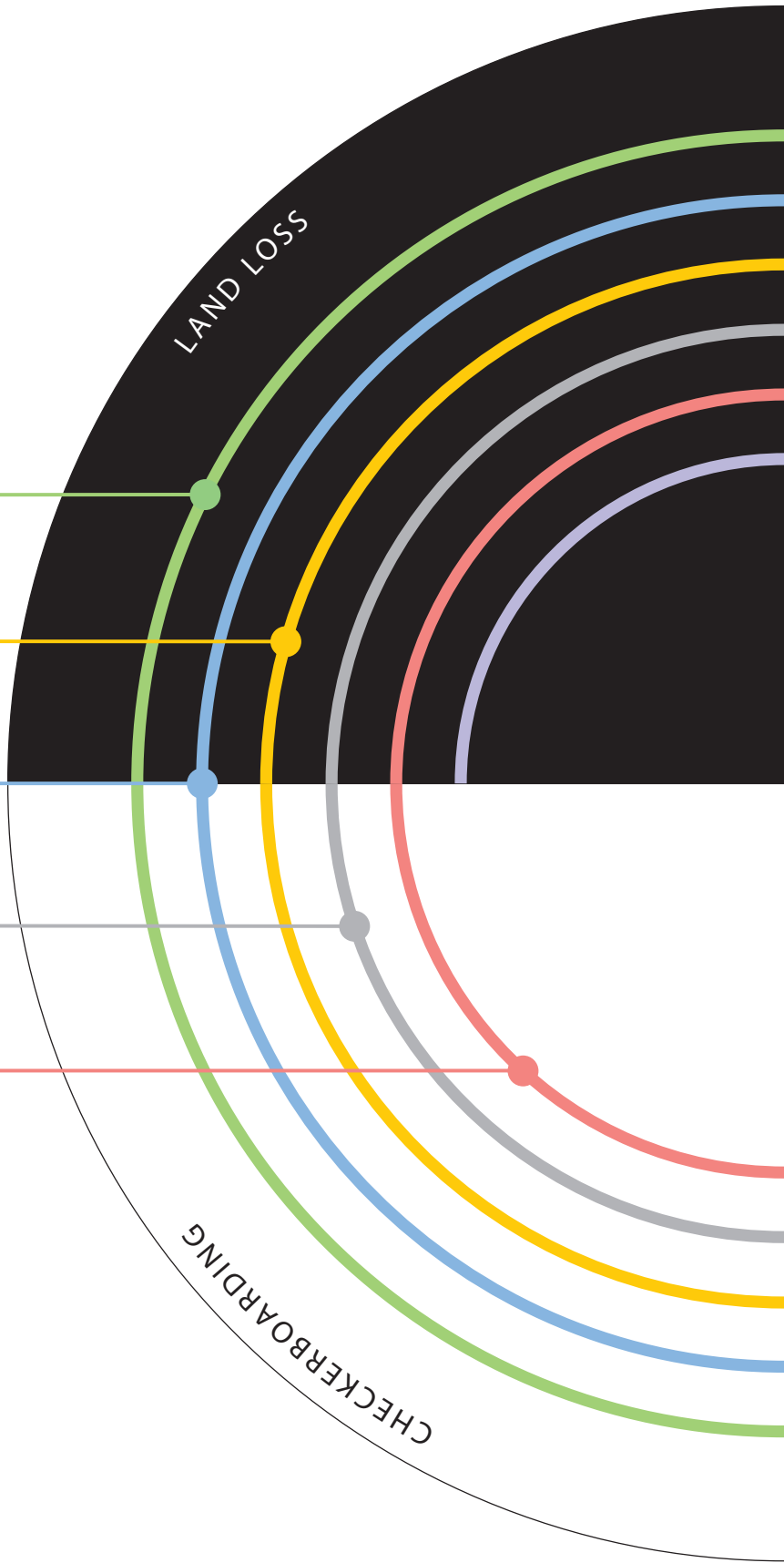
Land provides a direct connection to the traditional places, practices and beliefs that hold cultural groups and tribes together. When Indian people lose or leave their homelands, it becomes harder for each successive generation to remain rooted in cultural traditions. Federal policies, such as allotment, Christian boarding schools and relocation, were designed to assimilate Indian people into American culture by removing them from their land—severing their ties to family groups, languages and traditional lifestyles. Today, nearly two-thirds of all Indian people live away from their homelands.

## JURISDICTIONAL CHALLENGES

Indian reservations often contain land with many different types of ownership (trust, fee, restricted fee, Indian, non-Indian) creating a checkerboard ownership pattern. As a result, reservation lands are also under several different jurisdictions (tribal, city, county, state, federal) making it difficult for Indian nations to assert regulatory and legal control and to foster new development on their lands. Many local disagreements over land use and law enforcement between tribal nations and neighboring cities, counties and private landowners have severely compromised tribal regulatory efforts and have crippled economic development.

## RESERVATION DIMINISHMENT

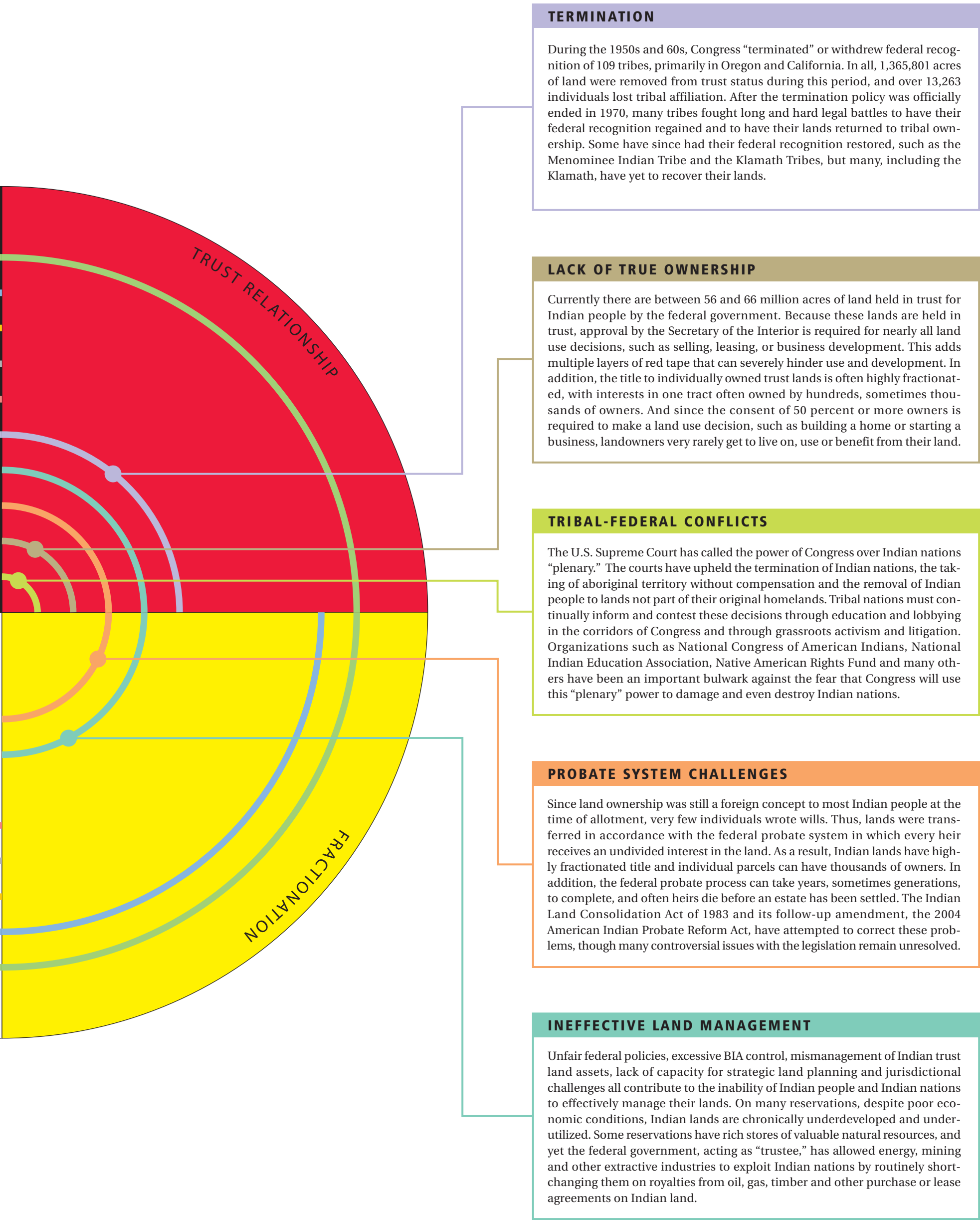
From 1887 to 1934, 90 million acres of Indian reservation land were transferred to non-Indian ownership and control. Yet, despite the land losses during this period, many exterior reservation boundaries remained intact. However, in the past century, the exterior boundaries of many reservations have also been diminished. For example, the Yankton Sioux Reservation in South Dakota had 430,405 acres when it was established in 1858. During allotment, 168,000 acres of Yankton land were declared “surplus” and sold to outside parties. In 1998, the Supreme Court ruled that the Yankton Reservation's surplus land would no longer be considered part of the reservation, and thus diminished the reservation and its boundaries as a whole.





# Indian Land Ownership Today

serious challenges to our Indian lands and to the well-being of our Indian nations will take many years, possibly many generations, to overcome. But one day, we hope to produce a “medicine wheel” that is healed and that will illustrate the strength and health of Indian land tenure, including the success stories of the Indian nations whose homelands have been recovered and whose people are culturally, socially, politically and economically strong.





## From the IRA to Termination



Allotment of land on reservations ended with the passage of the Indian Reorganization Act (IRA) in 1934, which recognized Indian nations' sovereign status and encouraged them to form tribal governments, reclaim their land bases and manage their lands more independently. After 1934, tribes whose land bases had been heavily allotted and alienated faced significant challenges related to poverty, education and health care on their reservations. Tribal leaders focused on building their governance to strengthen tribal communities and manage their land and resources.

Though the IRA abolished the practice of allotting land, nearly 50 years of allotment had created an ownership maze on many reservations that included individual trust land, tribal trust land, fee land, and alienated land owned by various non-Indian entities. Over the years, the trust land ownership interests had become increasingly fractionated and difficult to manage. Some of the tribes who chose to adopt IRA governments used this new political infrastructure to develop institutions specifically focused on tribal land. For example, in 1943 the Rosebud Sioux Tribe established Tribal Land Enterprise (TLE), a tribally-run corporation focused on managing and consolidating the tribal land base. Still in operation, TLE has become a successful model for how tribes can effectively reduce fractionated ownership, regain alienated tracts, and restore land to tribal control.

### Trust System Preserved

While the IRA abolished the practice of allotting land, it also extended the trust period indefinitely. It charged the Secretary of the Interior with the authority to take new lands into trust for tribes, helping to stem the tide of land loss. Even so, it did not eliminate that problem. The "takings" of Indian lands continued through the 1930s and 40s as government entities seized lands for infrastructure uses such as dams and other water projects, railroads, highways, schools and defense department needs.

To address tribal grievances about treaty adherence and management of land and resources, the federal government established the Indian Claims Commission in 1945. Tribes who filed suit were required to prove aboriginal title to lands that had been removed from tribal ownership and control.

Claims often dragged on for years as Indian nations fought to have lands returned. Several years into litigation, the courts held that only monetary damages, and not land, could be recovered. When tribes tried to withdraw their claims, the claims courts denied their request to withdraw and pushed the trials to conclusion against tribal opposition. Though some tribes received compensation, resulting financial settlements finalized land loss and did not take into account potential past or future revenue from land.

### Termination

During the 1940s there was growing sentiment among lawmakers that the federal system of dealing with Indians was not working and that tribes no longer needed the government's protection. In 1953, less than two decades after the trust status of Indian land had been guaranteed by the IRA, Congress passed House Concurrent Resolution 108 which was designed to end the federal responsibility toward tribes and assimilate them into mainstream society.

HR 108 set up the process whereby an Indian nation as a political entity defined by the U.S., would be terminated, tribal lands would be taken out of trust and sold, and state laws would be imposed on former reservation lands. Those behind HR 108 rationalized that it gave Indian people the right to be treated equally to other citizens.

What termination meant for tribes, however, was the loss of tribal nation status, liquidation of tribal assets, including land, and the distribution of the proceeds to tribal members. Members were forced to withdraw from the tribe and received monetary payment for their land. More than two-thirds of the tribal members of terminated tribes took this option—giving the tribe little recourse for recovering land that had been in trust ownership for years.

The government pursued termination of Indian tribes into the 1960s, beginning with tribes deemed the most self sufficient. Termination imposed state jurisdiction of the territories on terminated tribes, eliminated the government-to-government relationship and ended the government's trusteeship of Indian land. The practice effectively dismantled the reservation system that had been created to guarantee lands exclusively for Indian people and tribes. The federal policy resulted in the abrupt termination of

the Klamath (Oregon), the Menominee (Wisconsin) and many others, tribes that at the time were considered adequately self sufficient and economically successful. Some tribes, like the Choctaw, were successful at delaying termination.

In addition, tribal sovereignty was further compromised when in 1953 Congress passed Public Law 280, which specifically named six states: Oregon, California, Nebraska, Minnesota, Wisconsin and, upon its statehood, Alaska. Under Public Law 280, which is still in effect, states, local sheriffs and state law enforcement agencies can take tribal members to state courts for prosecution in cases arising from criminal matters and some civil matters within reservation boundaries. As a result, tribes within the mandatory states (with the exception of Red Lake in Minnesota, Warm Springs in Oregon and, later, the Menominee in Wisconsin) are forced to allow state jurisdiction over reservation lands. Ten other states have since adopted similar legislation providing for partial state and local jurisdiction over crimes committed by tribal members on tribal lands.

As a result of the termination policy, Congress withdrew federal recognition of 109 tribes in Oregon, California, Wisconsin and several other states without their permission, participation or full understanding of the consequences. In all, 1,365,801 acres of land were removed from trust status and 13,263 individuals lost tribal affiliation. In addition to catastrophic land loss for the tribes involved, withdrawal of this recognition also meant numerous programs that provided education, health and welfare assistance to Indian communities came to an end. Quality of life on reservations experienced further decline without protection of the land base or federal support for the community's needs.

*Continued on page 11*

### Menominee Tribe of Wisconsin: From Termination to Restoration

The Menominee Tribe of Wisconsin was one of 109 tribes to have its federal recognition terminated during this dark period of U.S. Indian policy. Following termination, all Menominee tribal assets were transferred to a new corporation, Menominee Enterprises, Inc. (MEI) and the reservation became a new county, Menominee County. Prior to termination, the Menominees were a prosperous tribe with a successful timber operation. But during the nearly 20 years from when the Tribe was terminated in 1954 until re-recognition in 1973, the Tribe experienced severe social and economic hardship and many tribal members left for nearby urban areas, such as Milwaukee and Chicago.

During the termination years, Menominee County was the least populated and poorest county in Wisconsin. In an effort to improve social and economic conditions for its Tribal members, MEI wanted to sell a portion of the Tribe's land to a private developer. Community activists opposed the plan, which would have included the creation of a man-made lake and a housing development, and created a group called the Determination of Rights and Unity for Menominee Stockholders (DRUMS). DRUMS successfully fought to stop the proposed development. Later, members of DRUMS led the Tribe's efforts to regain federal recognition and to have its lands restored to trust status.



# The Self-Determination Era



Michael Korttua Johnson

*During the Self-Determination Era, federal Indian policy encouraged Indian nations to take greater control of the management of their lands and resources.*

In the 1960s and 1970s, while the broader civil rights movement was playing out on the American stage, Native activists were challenging the unfair federal policies that had led to massive Indian land losses and repeated attacks on tribal sovereignty. Termination had proven to be an abysmal failure, with large scale and irreversible consequences for the tribes it had impacted. A new approach to U.S.-Indian relations and tribal governance was needed. In 1975, Congress passed the Indian Self-Determination and Educational Assistance Act, signaling a dramatic shift in federal policy from one of terminating tribes to one of supporting tribes in their efforts to have greater control over the management of their resources and the determination of their futures as sovereign nations.

In all, nearly 1.4 million acres of tribal land were lost due to termination. For tribes that had been terminated, the Indian Self-Determination Act provided political and legal reinforcement for tribes to begin the process of regaining federal recognition and to start rebuilding their land bases. The Menominee Indian Tribe of Wisconsin, terminated in 1954, had 235,000 acres of land returned to trust status upon re-recognition in the Menominee Restoration Act of 1973, but only after a group of tribal members fought hard to keep the lands in tribal control (see sidebar). For their part, the Klamath Tribes were restored as a federally recognized tribe in 1986, and while they have worked with a number of groups to negotiate the return of over 700,000 acres of former tribal lands, they have yet to recover any significant part of the 880,000 acre reservation that was dissolved upon termination in 1954. Sadly, the vast majority of lands that were lost as a result of the termination of over one hundred tribes still remain out of Indian control.

Nevertheless, Indian nations had several successful court rulings in the period of self-determination that followed termination. In a number of cases, tribes and Native individuals took the federal government to court to press for recognition of Indian land and treaty rights and won. For example, in 1972, the Passamaquoddy Tribe and the Penobscot Indian Nation sued for \$25 billion and 12.5 million acres in Maine and won a landmark ruling from the U.S. District Court. While the tribes did not win a return of lands, they did receive a monetary settlement of \$81.5 million, setting more than \$54 million aside for land acquisition. Similarly, the Lakota tribes received a 1980 Supreme Court judgment for \$106 million for the wrongful taking of the Black Hills, but the tribes refused the money judgment and are instead holding out for the return of the lands. Another tribe, the Sandia Pueblo in New Mexico, sued for rights to the Sandia Mountains and after 30 years of litigation, finally gained a settlement in 2003 affirming their right to use the land for religious purposes and giving the tribe some control over land use in the area. Overall, tribes have had varying degrees of success in seeking the return of lands through legal means, but because of the strong cultural and historical ties to their homelands, tribes will no doubt continue to seek the return of the land or restitution for the wrongful taking of their lands.

### Indian Nations Assert Their Rights

Increasingly, Indian tribes and Indian land rights advocates have become more proactive in their approach to managing their existing lands and have voiced their concerns about government mismanagement of trust land in myriad ways. Several pieces of legislation during the 1980s, 1990s and the early 2000s were passed in response to the growing prob-

lems of fractionated Indian land title and checkerboarding on reservations. The 1983 Indian Land Consolidation Act and its subsequent amendments, including the American Indian Probate Reform Act of 2004, intended to promote the consolidation of small ownership interests, place restrictions on the inheritance of reservation land and encourage tribes to take greater control over the probate of Indian-owned land. Individual Indian leaders have also stood up for the rights of Indian people. In 1996, Elouise Cobell of the Blackfeet Nation sued the Department of the Interior for mismanagement of trust funds on behalf of 500,000 Individual Indian Money account holders. These accounts hold funds primarily derived from trust land-related activities. Evidence in the case proved that the federal government grossly mismanaged its trust responsibility regarding these accounts for over a century. On December 7, 2009 a settlement with the plaintiffs was reached. One year later, President Obama signed legislation approving the Indian Trust Settlement and authorizing \$3.4 billion in funds.

Pursuing change through legislation and litigation are important pieces in overall policy reform, but tribes have also looked to themselves to make changes by taking control at the tribal level. One of the key provisions of the Self-Determination Act was its authorization of federal agencies, such as the BIA, to contract services out to the tribal nations themselves. This way, the nations are direct recipients of funding that would have otherwise been allocated to government agencies. Tribes can use this funding to develop programs and provide services that serve the unique needs of tribal members at a local level. Many Indian nations, for instance, have begun to independently manage their land bases, setting up tribal land offices that coordinate land use planning, provide zoning and regulatory functions, manage ownership information and work closely with numerous local and federal agencies in the oversight of tribal lands. In addition to allowing the tribe to have greater control over the land base on a broad scale, providing land management services for tribal members has immediate benefits as well. For example, in a study of tribes who had contracted to take over land title and records functions, the Saginaw Chippewa Tribe of Michigan reported that the number of on-reservation home purchases rose dramatically once they were able to process title status reports for their tribal members, a process that went from taking one to two years through the BIA to taking less than a day.

On the whole, these are positive steps toward much needed change, but after over a century of destructive policies and systematic neglect, progress is slow. While there is movement toward land recovery and reform, both within Indian Country and at the federal level, tribes still struggle to protect and recover land, to exercise tribal jurisdiction over reservation areas and to develop land use and management strategies that benefit Indian people. Many critical issues, such as alienation of tribal lands, barriers to homeownership and economic development on reservations, and significant challenges related to the federal trust system continue to require persistent attention and targeted resources.

*Continued from page 10*

In 1970, President Richard Nixon officially ended termination, but for many tribes, the damage had been done—their land, way of life, and the tribal community had been lost. For terminated tribes, the

only resolution was to pursue re-recognition through Congress or the BIA and attempt to recover their land bases as best they could.



# Taking Back the Land: A Fee-to-Trust Process Overview

Between 1887 and 1934, more than 90 million acres of land passed out of Indian ownership and control. Since the Indian Reorganization Act (IRA) in 1934, Indian nations have endeavored to recover their lost homelands and put that acreage into trust. Indian nations have had many challenges restoring those lands largely because of the excessive cost, lack of capital for purchases, local, regional and national opposition to putting land back in trust and the innumerable bureaucratic hurdles tribes face when attempting to convert newly acquired land into trust status.

Despite the fact that the IRA put an end to allotment and mandated the Secretary of the Interior to put recovered tribal land into trust, of the 90 million acres of land lost, only about nine percent—or eight million acres—have been re-acquired into trust. In 2003, the Department of Interior reported that there were approximately 56 million acres of land held in trust or restricted status by the Bureau of Indian Affairs (BIA). Of that amount, roughly 45 million acres were owned by tribes and 11 million by individual Indians. It should be noted that the BIA currently states on its website that there are 66 million acres of land held in trust, though they have not released an official accounting of these new data explaining how they arrived at the numbers or identifying how much is in individual and tribal ownership.

## Beneficial Use and Benefits of Trust Land

When land is taken into trust by the federal government on behalf of an Indian nation or individual Indian, the legal title of that land is assumed by the United States and the jurisdictional authority is assumed by the Indian nation and the United States. While the tribe or individual retains beneficial use of the land, it can no longer be sold, mortgaged or used in a number of ways without permission from the Secretary of the Interior. The tribe retains jurisdictional authority over the land; the tribe and individual owners retain the right to any income generated from the use of the land or from its resources, such as mineral extraction, timber sales, agricultural leasing and rights of way leasing. Once land is taken into trust, it is no longer subject to taxation by state or

local governments and in most cases, it is not subject to state or county jurisdiction.

New fee-to-trust land applications sometimes face opposition by local governments—city, county or state—who fear the loss of jurisdictional authority and the potential loss of revenue because of a reduced taxable land base. Trust land reacquisition, however, is critical to the economic, cultural, and spiritual health of Indian nations and is often beneficial to the surrounding non-Indian communities as well. Many tribes use reacquired trust lands for business development, creating jobs and much needed revenue streams, often in economically depressed rural communities with high unemployment. Addressing the obstacles in the fee-to-trust process and educating the public about the community-wide benefits of putting land back into trust is a necessary step for tribes if they are to meet goals for recovering, managing and protecting their homelands.

## Options for Taking Land into Trust

There are two primary methods for taking land back into trust: through an Act of Congress or through approval of the Secretary of the Interior, using the BIA process. Tribes have both of these options available, whereas individuals are restricted to seeking approval through a petition to the BIA. For both tribes and individuals, seeking a fee-to-trust conversion through the Secretary of the Interior is a similar process involving many steps, multiple agencies and a lot of paperwork. Fee-to-trust conversions can take years to complete, but the individual landowners and tribes who undertake this process also understand the benefits of trust status.

By taking their fee-to-trust petitions directly to Congress, tribes can potentially bypass some delays that occur processing fee-to-trust through the BIA. A total of four bills were introduced in the 109th congress (2005-2007) to take land into trust for Indian tribes. Of the four bills presented, two tribes were successful—the Puyallup Indian Tribe and the Utu Utu Gwaitu Paiute, whose petitions became public law. The other two tribes' petitions were stalled in committee. Applying directly to Congress for fee-to-trust, however, requires that tribes obtain a sponsor



*The Lower Flathead River on the Flathead Indian Reservation in Montana.*

Jake Wallis

for their bill and lobby for its passage. This route to trust land can also be lengthy and very costly.

Taking land into trust through a petition to the BIA is by far the most common route for tribes. The historical precedent for the Secretary of the Interior taking land into trust for tribes was initially spelled out as part of the IRA, which authorizes the Secretary to acquire land and take it into trust “for the purpose of providing land for Indians” and specifies that the land “shall be exempt from State and local taxation.” The administrative and legal procedures for taking land into trust today still follow the stipulations outlined in the IRA, though a Supreme Court ruling, *Carcieri v. Salazar*, called some of the language into question and created a demand for clarification (see sidebar).

The fee-to-trust process through the Secretary of the Interior begins with the tribe or individual petitioning the Secretary to take land into trust through application with the BIA. For many tribes, this is a complicated and lengthy process due to extensive red tape and poorly defined guidelines. Petitioners often face multiple obstacles such as costly and time consuming appraisals, surveys, and environmental assessments. Some of the questions tribes must answer in the fee-to-trust application include:

- Why does the tribe or individual need the additional land?
- What will the land be used for?
- How will the loss of tax revenue from these lands impact the state?
- Do any jurisdictional problems or potential conflicts of land use exist?
- Is the current and proposed land use in compliance with the National Environmental Policy Act?

While some of these questions may seem simple on the surface, others indicate the degree to which tribes must go to prove their case, often fighting an uphill battle.

Fee-to-trust applications sometimes involve local and state government entities, or become bogged down by court procedures and litigation by affected parties. In 2007 and 2008, the Senate Committee on Indian Affairs held oversight hearings into the backlog of fee-to-trust applications. Carl J. Artman,

## **Carcieri v. Salazar: A New Assault on Indian Land**

Siding with the state of Rhode Island, on February 24, 2009, the Supreme Court ruled that the Secretary of the Interior does not have the authority to take land into trust for the Narragansett Indian Tribe because the Tribe was not federally recognized at the time of the Indian Reorganization Act of 1934. Up until the ruling, which was a major setback in federal Indian law for some number of tribes, the Department of Interior had not placed restrictions on fee-to-trust conversions based on when a tribe was federally recognized.

The Narragansett Indian Tribe gained formal recognition from the Federal Government in 1983, at which time it received 1,800 acres of trust land. In 1991, the Tribe purchased an additional 31-acre parcel of land in Charlestown, Rhode Island to build a housing complex for the elderly, and in 1998, the Secretary of the Interior approved their petition to have the land placed in trust. Rhode Island officials contested the decision, claiming that the Department of Interior does not have the authority to do so, citing language from the Indian Reorganization Act that limits trust land status to “persons of Indian descent who are members of any recognized tribe now under Federal jurisdiction.” At issue is the word “now,” which the Court argues refers only to tribes that were under Federal jurisdiction on June 1, 1934.

## **What It Means for Tribes**

Indian lands already taken into trust for tribes who gained federal recognition after 1934 are not likely to be affected by the ruling. But tribes petitioning for fee-to-trust conversions going forward will now have to prove their federal recognition status under the IRA, which will make an already lengthy and costly process that much more so. One tribe, the United Keetoowah Band of Cherokee Indians of Oklahoma, has already had its fee-to-trust application delayed as a result of the ruling.



Continued from page 12

Assistant Secretary for Indian Affairs, provided testimony on the number of pending applications which provided disturbing insight into the maze-like BIA fee-to-trust application and review process (see sidebar).

Because the Secretary of the Interior has discretionary authority in taking land into trust, he or she ultimately determines the success or failure of an application. Depending on the political climate, some of these rulings can be perceived as biased or unfair and not necessarily representative of the validity or quality of the application itself.

Taking Land into Trust Outside Reservation Boundaries

Taking land outside of reservation boundaries into trust through the Secretary of the Interior’s approval often requires additional steps and greater scrutiny. If the land in question is not mandated to be aquired into trust by statute, then further criteria must be addressed in the application, such as the distance of the property from the tribe’s reservation, a business plan (if applicable) and any impacts on regulatory jurisdiction, property taxes and special assessments.

The rise of tribal gaming has created additional requirements in the fee-to-trust process. In May of 2008, the BIA implemented a new rule which creates a 25-mile zone radiating out from tribal headquarters beyond which the agency does not allow the construction of tribal casinos on newly acquired land. (This rule does not apply to land taken into trust for housing or other non-gaming-related businesses.) Tribes may seek an exception to this rule if they can demonstrate a significant number of tribal members reside near the proposed gaming site. However, the BIA memo does not define, either by number or percentage, what constitutes a “significant number” of tribal members. Tribes may also seek an exception if they can demonstrate that they have a current connection to the land under consideration or if they have operated tribal government facilities on the land for at least two years before the gaming application is filed.

Ultimately, the purpose of putting Indian land back into trust is to restore and protect tribal land bases lost as a result of the General Allotment Act. Trust status also confers jurisdictional authority over that land to tribal governments, which is a key exercise of tribal sovereignty. Unfortunately, the consequences of administrative delays and the growing backlog of fee-to-trust applications have hampered the efforts of many tribes to expand economic opportunities, protect land, build homesites and more.

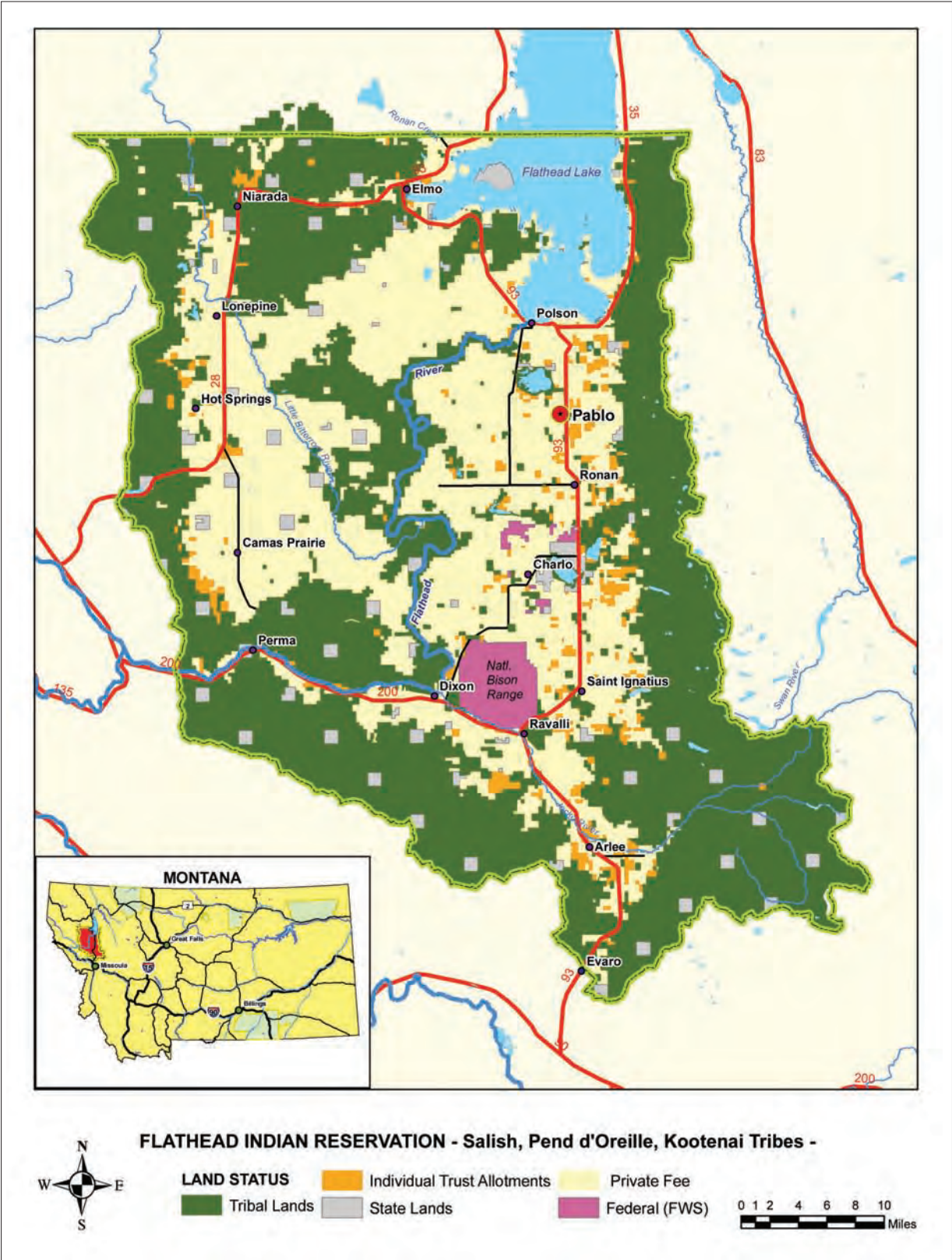
Fee-to-Trust Snapshot

Between October 10, 2007 and April 28, 2008, the BIA reported receiving a total of 1,489 fee-to-trust requests from tribes. Only six percent of the applications were approved during this seven-month period, and approximately 40,027 acres were transferred into trust status. Given the BIA’s history of poor accounting, it is interesting to note that only 1,421 applications are actually accounted for in the report, leaving the status of 68 applications unknown..

Out of the 1,489 applications:

- 89 were approved
- 266 were denied
- 90 were withdrawn
- 613 lacked sufficient information to proceed to review
- 178 were waiting on local government comments or tribal responses to those questions
- 45 were undergoing NEPA (National Environmental Protection Act) analysis
- 35 were being surveyed for hazardous materials impacts
- 105 were being reviewed to determine if title issues need to be resolved before a fee-to-trust determination can be made

Source: From the May 22, 2008 testimony of Carl J. Artman, Assistant Secretary for Indian Affairs.



This map of the Flathead Indian Reservation in Montana shows the multiple types of land ownership that exist on the reservation, creating a “checkerboard” pattern. On the Flathead Reservation, nearly half of the land (48 percent) is privately held fee land.



# Securing Indian Land for Future Generations

Writing a will has at least three important, positive outcomes for Indian landowners. First, it allows Indian people to decide for themselves who inherits their land, whether that is a spouse, a relative, a tribal member, or the tribe. Second, it ensures that Indian lands remain in trust status and are not subject to forced sales at probate. And third, writing a will is one of the most effective ways to prevent the further fractionation of Indian land ownership.

## Without a Will

### Tribal Probate Code

When a valid will does not exist, but the tribe has an approved probate code in place, a deceased landowner's trust land will be transferred according to the provisions in the tribal probate code. With a tribal probate code, tribes can have more control over how land is transferred and to whom, and ensure that land remains in trust status. Some tribes that currently have tribal probate codes include: Oglala Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Standing Rock Sioux Tribe, Lummi Nation, Confederated Tribes of the Colville Reservation, Nez Perce Tribe, and Confederated Tribes of the Umatilla Indian Reservation.

### AIPRA

When a trust landowner does not have a valid will and a tribal probate code is not in place, trust land is transferred according to the probate provisions of the 2004 American Indian Probate Reform Act, or AIPRA. Ostensibly, the federal code was written in an



attempt to address the backlog of pending probates (there were 58,600 in May 2008), to limit fractionation and to encourage the writing of wills. However, Indian policy advocates across the country have voiced concerns about some aspects of the code, such as stipulations allowing for the sale of small ownership interests under certain conditions. As a result, AIPRA has since been through several amendments and will likely continue to be closely monitored by experts in the Indian community.

## With a Will

Through a will, trust land can be transferred to any Indian person, to the tribe on whose reservation the trust land is located, or to any Indian co-owners of the trust land. Landowners with a will can either: pass their trust land to their Indian spouse (not just as a life estate), give their non-Indian spouse any non-restricted fee lands, or choose to not leave any trust interests at all to their spouse. If landowners with a will give their spouse a life estate, they can give individual interests to different children or grandchildren or they can leave no land at all to their children.

Having a will also empowers landowners to consolidate their land interests to prevent further fractionation of Indian land. If they choose to, landowners can leave all of their land interests to one person. Or, they might choose to give a life estate to their spouse and/or children, and have the land transferred to the tribe when all the heirs have passed away, another way to consolidate ownership interests and prevent fractionation. There are many options available. Just as each tribe has unique land ownership circumstances, so do Indian families. Each family should seek a land transfer solution tailored to their specific needs.

Ensuring that the legacies of their families are preserved and honored and that complicated legal and financial decisions are thoughtfully made should be a top priority for all Indian landowners. The main thing to remember is that landowners with a will can control what happens to their land and can actively help to reduce fractionation for future generations. When a landowner dies without a will, either the tribe or the federal government ends up having the final say.

*For more information on will writing, estate planning and AIPRA, contact the Institute for Indian Estate Planning and Probate at Seattle University, or visit the Institute's website: [www.indianwills.org](http://www.indianwills.org).*

# Tribal Land Offices in Indian Country Today

One could argue that the future economic success and political stability of Indian Country is dependent on effective and efficient land management. As a result of federal policies largely initiated during the Self-Determination Era, tribal nations can now provide administrative and land management services for their tribal members that historically have been overseen by the Bureau of Indian Affairs (BIA). Indian nations are increasingly asserting their power as sovereign nations and taking control of the management of their own lands through the creation of tribal land offices.

### Some of the activities of a tribal land office include:

- Facilitating land acquisition, fee-to-trust conversions, land transfers and exchanges
- Managing and storing land ownership records and information, such as title histories, rights of way records, lease management and will storage
- Establishing fair and accurate lease agreements
- Providing GIS mapping services and products
- Coordinating strategic land planning for the tribe and individual landowners
- Overseeing land use zoning regulation planning and enforcement

### Tribal land offices allow tribes to:

- Exercise tribal sovereignty by controlling and managing the land-related transactions, regulatory functions and major decisions that impact the economic, social and cultural well-being of the reservation
- Increase economic opportunity through business planning and development
- Protect sacred sites and culturally significant areas
- Educate tribal members and non-Indian community members about land issues on the reservation

### Tribal land offices help tribal members by:

- Increasing the efficiency of land ownership transactions
- Helping to reduce fractionation through land consolidation, exchanges and transfer
- Increasing home ownership and land use opportunities
- Improving access to important land ownership documents and records
- Providing services that help landowners to earn maximum income from their leased lands



# Land Use Planning on the Pine Ridge Reservation

Calvin White Butterfly knows that the future of the Lakota people living on the Pine Ridge Reservation is directly tied to their relationship with the land. He wants to help empower the Lakota *oyate* (people) to learn more about the lands they own and about how they can use these lands to benefit themselves and their communities.

The Pine Ridge Reservation, located in the southwest corner of South Dakota along the Nebraska border, contains 2.7 million acres within the reservation boundaries. Like many reservations across the U.S., Indian-owned land was drastically reduced during Allotment. Today, there are 1.7 million acres of Indian-owned land on Pine Ridge, 60 percent of which is held by individuals. Most of these lands are highly fractionated, making it almost impossible for landowners to gain the majority consent necessary to use the land for homesites, development, grazing, or agriculture.

Because the parcels are highly fractionated, most landowners on Pine Ridge have few choices aside from leasing their lands out as part of the BIA range unit leasing system. Nearly 65 percent of all lands on Pine Ridge are included in these range units. Unfortunately, this is a questionable economic deal for the landowners. According to the USDA, in 2002 there were nearly \$33 million in receipts from agricultural production on Pine Ridge, yet less than a third of that income went to members of the Tribe.

Mr. White Butterfly and several other community-based volunteers on Pine Ridge want to put a stop to this marginal system and encourage landowners to take control of their own lands. They are working

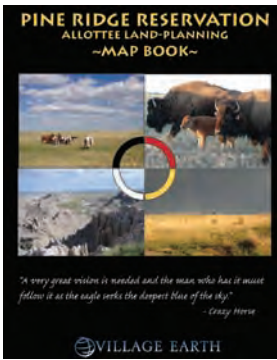
together with Village Earth, a nonprofit organization focused on sustainable community development, to build the capacity of traditional Lakota *tiospayes* (family groups) to recover, restore, utilize and manage the remaining land base.

“I wanted to try to provide some kind of answer for these people,” White Butterfly explains, “so that these *oyate* can survive, so that they can understand themselves, they can understand that they are an important part . . . of their own *tiospaye*.”

Seven of the traditional *tiospayes* on Pine Ridge are participating in the project—a significant achievement for Village Earth, who has developed a reputation for its strong commitment to the Lakota people on Pine Ridge since it began community development work there in 2000. (ILTF awarded grants to Village Earth in 2007 and 2008 to support its activities on Pine Ridge.) Village Earth’s approach is to help Lakota communities develop a shared vision, identify obstacles to achieving that vision, create action plans to overcome those obstacles, and access and manage the resources needed to realize their plans.

One of the largest obstacles many landowners face is simply not knowing where the land they own is located. Most allotments have multiple owners, and often landowners have interests in multiple parcels, which are sometimes scattered across several different reservations. Rarely do landowners on Pine Ridge actually live on their land. Usually, lands are leased out to non-Indian farmers and ranchers, and often the only connection Indian landowners have with their land is the annual lease income check they receive from the BIA. Finding out the location of their lands is the first step in developing a land use plan.

To make this process easier, Village Earth created the *Pine Ridge Reservation Allottee Land-Planning Map Book*. In addition to basic “How To” information about land use planning, the book includes GIS maps of the entire reservation indicating which lands are tribal, allotted, privately-owned or national park lands. Interested landowners need only to find out their tract identification numbers and then locate the tract(s) on the map. The tract ID number is found on a landowner’s “individual interest



The Pine Ridge Reservation Allottee Land-Planning Map Book is helping Lakota landowners to locate their lands.

report” (or “heirship card”). Copies of a landowner’s individual interest report can be obtained from the local BIA realty office.

The other major obstacle for landowners is getting access to the appropriate information about land use options and learning how to get through what can seem like a never-ending

bureaucratic maze. As a part of the project, land use planning workshops were held in seven communities throughout Pine Ridge. The workshops explained the whole process, from locating land to options for consolidating and managing land holdings. But perhaps more importantly, land planning advocates from each of the *tiospayes* have offered to help individuals and families through the land use planning process. This is key for those individuals who would like to do more with their lands but have been frustrated by the complex red tape involved.

So far, nine Lakota families are in the process of developing land consolidation and management plans. Most of the families hope to use their land for buffalo pasture or for homesites. In the long run, Village Earth hopes to have a dozen families participating and 2,500 acres of land returned to Indian control on the reservation. As part of the project, Village Earth created a series of videos documenting the community meetings and also created the Pine Ridge Project Blog to post information about the project and encourage community-wide discussion.

To be sure, one of the project’s primary goals is to increase the economic independence of Pine Ridge tribal members through land management and to do so in a sustainable and culturally appropriate way. But for some participants, like Calvin White Butterfly, the project has an even deeper significance. He hopes to see not only an economic benefit, but a social and cultural benefit that will extend to future generations. He is particularly concerned with the Lakota youth, who he hopes will be inspired to reconnect with their tribal values and customs as more land comes under Indian control: “[W]e have children who are losing their identities. ... They haven’t practiced [traditional ways], and they are losing those. And I want to put those back into those kids.”

To learn more about Village Earth’s community-based development projects on Pine Ridge, view project videos and subscribe to the Pine Ridge Project Blog, visit: [www.villageearth.org](http://www.villageearth.org).



Left: Calvin White Butterfly is one of several community volunteers on the Pine Ridge Reservation helping tribal members to take control of their lands. Right: Henry Red Cloud, buffalo rancher and descendent of Chief Red Cloud, on the Pine Ridge Reservation.

## Land Consolidation Options During Your Lifetime

In addition to writing a will and estate planning, here are some ways landowners can consolidate trust land during their lifetimes.

### Gift Deeds

- A gift deed transfers legal interests in lands from one person to another person and may increase an individual owner’s share within a tract. This can also be done through a “negotiated sale” wherein an owner purchases the interest from another owner.

### Land Exchange

- A land exchange involves co-owners who share interests in multiple parcels of land exchanging their interests with one another so that they each end up with larger interest shares in one of the parcels.

### Partitioning

- When one owner of a “highly fractionated” parcel of land purchases and consolidates all of the other interests in the parcel. Written consent is required from: the tribe; co-owners residing, farming, ranching or maintaining a business on the land for more than three years prior to partition; and at least 50 percent of the co-owners in that parcel.
- Prior to AIPRA, partitioning meant dividing the land into separate, individually-owned parcels. This kind of partitioning still exists.





# Glossary

## Alienated Land

Land that has had its ownership transferred to another party.

## Allotted Land

Reservation land the federal government distributed to individual Indians, generally in 40-, 80- and 160-acre parcels.

## Allottee

An individual who owns an undivided interest in a parcel of allotted land.

## Beneficial Use

The right to benefit from (live on, use, profit from) a parcel of land, the legal title to which is held by the trustee. In the case of Indian land, the trustee is the federal government.

## Checkerboarding

Lands within reservation boundaries may be in a variety of types of ownership—tribal, individual Indian, non-Indian, as well as a mix of trust and fee lands. The pattern of mixed ownership resembles a checkerboard.

## Fee Simple (Fee Land)

Land ownership status in which the owner holds title to and control of the property. The owner may make decisions about land use or sell the land without government oversight.

## Fee-to-Trust Conversion

When original allotted trust lands that were transferred to fee simple status are returned to trust status. Tribes or individual Indians can initiate the process on fee lands they already own or lands they acquire. In general, this conversion can take as much as two years.

## Forced Fee Patent

A trust-to-fee conversion without the request, consent, or knowledge of the landowner. Forced fee patents led to the loss of many land parcels through tax foreclosure sales.

## Fractionated Land Title (Fractionation)

Title to a parcel of Indian land that is owned in common by more than one interest holder. While the land itself remains intact, the ownership interests are divided among many individuals. As these ownership interests are passed down from generation to generation, title to the land becomes increasingly “fractionated.” Parcels with fractionated land title can have hundreds of owners, making it difficult for any one of the owners to use the land (i.e. for farming or building a home). By law, a majority of the ownership must agree to a particular use of land.

## Individual Indian Money Account (IIM Account)

Fund account administered by the Department of the Interior. Funds deposited into these accounts come from a number of sources, including land-related income from leases, timber harvest and mineral extraction on Indian land. In general, each Indian person with an undivided interest in trust land holds an IIM Account.

Indian Land Tenure Foundation published its first *Message Runner* in 2002 to provide Indian people and others with much-needed information about Indian land tenure issues. ILTF continues to produce new issues of the *Message Runner* on a range of relevant topics including estate planning and rights of way. Visit our website [www.iltf.org](http://www.iltf.org) to see all of the *Message Runners* ILTF has produced to date. To order back issues, contact us at [info@iltf.org](mailto:info@iltf.org) or call 651-766-8999.

**Vol. 1** - Our first *Message Runner* gives a broad overview of all the major issues surrounding Indian land tenure and offers some key solutions and strategies.

**Vol. 2** - This issue focuses on Indian estate planning and probate and the 2004 American Indian Probate Reform Act (AIPRA). It includes a colorful, pull-out graphic illustrating the process of land inheritance both with and without a will.

**Vol. 3** - This issue looks at the history of rights of way in Indian Country and includes a helpful how-to section for landowners and tribes negotiating rights of way on their lands.

## Life Estate

The right to live on, use, and take income from land during a person’s lifetime.

## Probate

The process through which property is transferred from a deceased property owner to his or her heirs and/or beneficiaries.

## Restricted Fee Land

Fee simple land that holds specific government-imposed restrictions on use and/or disposition. The title to the land is held by the individual Indian or tribe but may only be alienated or encumbered by the owner with the approval of the Secretary of the Interior.

As a community foundation, ILTF relies on funding from private foundations and donations from Indian nations, corporations and individual contributors to support its programming in Indian Country. Please consider making a donation to Indian Land Tenure Foundation today.

To learn more about our work and programs or to make a donation, visit our website [www.iltf.org](http://www.iltf.org).



Message Runner, Vol. 3

## Title Status Report (TSR)

A TSR takes the place of a title commitment for land that is held in trust. The TSR is a necessary precursor to issuing a mortgage for a property on trust land.

## Trust Land

Land owned either by an individual Indian or a tribe, the title to which is held in trust by the federal government. Most trust land is within reservation boundaries, but trust land can also be off-reservation, or outside the boundaries of an Indian reservation.

## Trust-to-Fee Conversion

The conversion of lands held in trust by the federal government to fee simple status. With the passage of the Burke Act of 1906, Indian lands held in trust were converted to fee status if the Secretary of the Interior determined that the Indian landowner was competent. Today, trust lands can be converted to fee status in 30 days. Only individual Indian landowners can request a trust-to-fee conversion.

## Undivided Interest

A share of the ownership interest in a parcel of trust land. The number of interests grows with the division among heirs of these interests according to federal or tribal probate laws. The income derived from the parcel is divided according to the percentage of the total interest held by an individual.



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