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S. HRG. 107–777

THE FIVE NATIONS CITIZENS LAND REFORM ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 2880

TO AMEND LAWS RELATING TO THE LANDS OF THE ENROLLEES AND LINEAL DESCENDANTS OF ENROLLEES WHOSE NAMES APPEAR ON THE FINAL INDIAN ROLLS OF THE MUSCOGEE (CREEK), SEMINOLE, CHEROKEE, CHICKASAW, AND CHOCTAW NATIONS (HISTORICALLY REFERRED TO AS THE FIVE CIVILIZED TRIBES)

SEPTEMBER 18, 2002
WASHINGTON, DC

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FIVE NATIONS CITIZENS LAND REFORM ACT

WEDNESDAY, SEPTEMBER 18, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 485, Senate Russell Building, the Hon. Daniel K. Inouye (chairman of the committee presiding).

Present: Senators Inouye, Campbell, and Inhofe.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Committee on Indian Affairs meets this morning to receive testimony on H.R. 2880, the Five Nations Citizens Indian Land Reform Act. Before I call upon the respective leaders of Oklahoma Indian country, may I call upon the vice chairman of the committee, Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. Thank you, Mr. Chairman, thank you for holding this important hearing, I assume that Senator Inhofe and Congressman Watkins will be along as they can.

The so-called Five Civilized Tribes were forcefully removed from the southeastern portion of the United States against their wishes and large tracts of land were set aside in an area then known as Indian territory, today known as the State of Oklahoma.

Like other Indian reservations, the Five Tribes' reservations were subjected to the allotment policy of the late 1880's. However, Congress went even further when it allotted these Indian reservations by giving State courts jurisdiction over the lands. One Federal court referred to this system as "fatally flawed" and most people who have looked at this situation agreed with the judge's criticism.

Through H.R. 2880, the Five Nations Indian Land Reform Act that Congress has the opportunity to correct a number of past errors and afford Indian lands in eastern Oklahoma the same protection afforded to other Indian lands and I want to lend my support to it.

In addition to the committee staff, I'd like to commend the efforts of the Oklahoma tribes, the entire Oklahoma Congressional delegation, but especially to Congressman Watkins and Senator Inhofe.

I understand through staff that this is one of the best-developed bills we've had come before the committee in the last 3 or 4 years. So I look forward to hearing from our witnesses.

Thank you, Mr. Chairman.

[Text of H.R. 2880 follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 2880

To amend laws relating to the lands of the citizens of the Muscogee (Creek), Seminole, Cherokee, Chickasaw, and Choctaw Nations, historically referred to as the Five Civilized Tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12 (legislative day, SEPTEMBER 11), 2001

Mr. WATKINS of Oklahoma (for himself, Mr. CARSON of Oklahoma, Mr. KILDEE, and Mr. CONDIT) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To amend laws relating to the lands of the citizens of the Muscogee (Creek), Seminole, Cherokee, Chickasaw, and Choctaw Nations, historically referred to as the Five Civilized Tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Five Nations Citizens Land Reform Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Definitions.

TITLE I—RESTRICTIONS; REMOVAL OF RESTRICTIONS

Sec. 101. Restrictions on real property.
Sec. 102. Reinvestment of proceeds from condemnation or conveyance of restricted property.
Sec. 103. Restricted funds.
Sec. 104. Period of restrictions.
Sec. 105. Removal of restrictions.
Sec. 106. Exemptions from prior claims.
Sec. 107. Fractional interests.

TITLE II—ADMINISTRATIVE APPROVAL OF CONVEYANCES, PARTITIONS, LEASES, AND MORTGAGES; MANAGEMENT OF MINERAL INTERESTS

Sec. 201. Approval authority for conveyances and leases.
Sec. 202. Approval of conveyances.
Sec. 203. Reimposition of restrictions on conveyances of property to Indian housing authorities.
Sec. 204. Administrative partition.
Sec. 205. Surface leases.
Sec. 206. Mineral leases.
Sec. 207. Management of mineral interests.
Sec. 208. Mortgages.

TITLE III—PROBATE, HEIRSHIP DETERMINATION, AND OTHER JUDICIAL PROCEEDINGS

Sec. 301. Actions affecting restricted property.
Sec. 302. Heirship determinations and probates.
Sec. 303. Actions to cure title defects.
Sec. 304. Involuntary partitions.
Sec. 305. Requirements for actions to cure title defects and involuntary partitions.
Sec. 306. Pending State proceedings.

TITLE IV—MISCELLANEOUS

Sec. 401. Regulations.
Sec. 402. Validation of certain transactions; savings clause.
Sec. 403. Repeals.
Sec. 404. Secretarial trust responsibility.
Sec. 405. Representation by attorneys for the Department of the Interior.
Sec. 406. Filing requirements; constructive notice.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Since 1970, Federal Indian policy has focused on Indian self-determination and economic

self-sufficiency. The exercise of Federal instrumentality jurisdiction by the Oklahoma State courts over the Indian property that is subject to Federal restrictions against alienation belonging to members of the Five Nations is inconsistent with that policy.

(2) It is a goal of Congress to recognize the Indian land base as an integral part of the culture and heritage of Indian citizens.

(3) The exercise of Federal instrumentality jurisdiction by the courts of the State of Oklahoma over conveyances and inheritance of restricted property belonging to Indian citizens of the Five Nations—

(A) is costly, confusing, and cumbersome, and effectively prevents any meaningful Indian estate planning, and unduly complicates the probating of Indian estates and other legal proceedings relating to Indian citizens and their lands; and

(B) has impeded the self-determination and economic self-sufficiency of Indian citizens within the exterior boundaries of the Five Nations.

SEC. 3. PURPOSE.

(a) IN GENERAL.—It is the purpose of this Act to—

(1) correct the disparate Federal treatment of individual allotted lands of Indian citizens of the Five Nations that resulted from prior Federal legislation by equalizing the Federal legislative treatment of restricted and trust lands;

(2) eliminate unnecessary legal and bureaucratic obstacles that impede the highest and best use of restricted property belonging to Indian citizens of the Five Nations;

(3) provide for an efficient process for the administrative review and approval of conveyances, voluntary partitions, and leases, and to provide for Federal administrative proceedings in testate and intestate probate and other cases that involve the restricted property of Indian citizens, which concern the rights of Indian citizens to hold and acquire such property in restricted and trust status; and

(4) transfer to the Secretary the Federal instrumentality jurisdiction of the Oklahoma State courts together with other authority currently exercised by such courts over the conveyance, devise, inheritance, lease, encumbrance, and partition under certain circumstances of restricted property belonging to Indian citizens of the Five Nations.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to limit or affect the rights of Indian citizens under other Federal laws relating to the acquisition and status of trust property, including without limitation, the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the Indian Reorganization Act), the Act of June 26, 1936 (25 U.S.C. 501 et seq.) (commonly known as the Oklahoma Indian Welfare Act), the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), and regulations relating to the Secretary's authority to acquire lands in trust for Indians and Indian tribes.

SEC. 4. DEFINITIONS.

In this Act:

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

(2) INDIAN CITIZEN.—The term ''Indian citizen'' means a member or citizen of one of the individual Five Nations referred to in paragraph (1), or an individual who is a lineal descendant by blood of an Indian ancestor enrolled on the final Indian rolls of the Five Civilized Tribes closed in 1906.

(3) INDIAN COUNTRY.—The term ''Indian country'' has the meaning given that term in section 1151 of title 18, United States Code, which includes restricted property and trust property (as such terms are defined in this Act).

(4) INDIAN NATION.—The term ''Indian Nation'' means one of the individual Five Nations referred to in paragraph (1).

(5) REGIONAL OFFICE.—The term ''Regional Office'' means the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs, or any successor office within the Department of the Interior.

(6) RESTRICTED PROPERTY.—The term ''restricted property'' means any right, title, or interest in real property owned by an Indian citizen that is subject to a restriction against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances imposed by this Act and other laws of the United States expressly applicable to the property of enrollees and lineal descendants of enrollees on the final Indian rolls of the Five Civilized Tribes in 1906, and includes, without limitation, those interests in property that were subject to a restriction against alienation imposed by the United States on the ownership of an Indian citizen who died prior to

the effective date of this Act but whose interest had not, as of the effective date of this Act—

(A) been the subject of a final order determining heirs by a State district court or a United States district court;

(B) been conveyed by heirs by deed approved in State district court; or

(C) been conveyed by heirs of less than one-half degree of Indian blood with or without State district court approval.

The term restricted property shall not include Indian trust allotments made pursuant to the General Allotment Act (25 U.S.C. 331 et seq.) or any other trust property.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior or the designee of the Secretary of the Interior.

(8) TRUST PROPERTY.—The term ''trust property'' means Indian property, title to which is held in trust by the United States for the benefit of an Indian citizen or an Indian Nation.

TITLE I—RESTRICTIONS; REMOVAL OF RESTRICTIONS

SEC. 101. RESTRICTIONS ON REAL PROPERTY.

(a) APPLICATION.—Beginning on the effective date of this Act, all restricted property shall be subject to restrictions against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances, regardless of the degree of Indian blood of the Indian citizen who owns such property.

(b) CONTINUATION.—

(1) IN GENERAL.—The restrictions made applicable under subsection (a) shall continue with respect to restricted property upon the acquisition of such property by an Indian citizen by inheritance, devise, gift, or exchange.

(2) WITH WAIVER.—The restrictions made applicable under subsection (a) shall continue with respect to restricted property upon the acquisition of such property by an Indian citizen by election to take at partition or by purchase, but only if—

(A) prior to the execution of the deed transferring such restricted property, the Indian citizen who owned such property prior to such election to take or purchase executes a written waiver of his or her right to acquire

other property in restricted status pursuant to section 102; and

(B) such restrictions appear in the deed transferring such property to the Indian citizen electing to take at partition or purchasing such property, together with certification on said deed by the Secretary that the requirements of this paragraph have been met.

SEC. 102. REINVESTMENT OF PROCEEDS FROM CONDEMNATION OR CONVEYANCE OF RESTRICTED PROPERTY.

(a) REQUIREMENT.—Upon the conveyance of the restricted property of an Indian citizen pursuant to this Act, or upon the conveyance or condemnation of such property pursuant to section 3 of the Act of March 3, 1901 (25 U.S.C. 357) or other Federal laws generally applicable to the condemnation of Indian trust or restricted property, to any individual, corporation, or other entity, any proceeds from such conveyance or condemnation shall be used to purchase from a willing seller other property designated by such Indian citizen, and such designated property shall be restricted property within the meaning of this Act if—

(1) such proceeds were deposited into a segregated account in a trust fund under the super-

vision of the Secretary at the request of the Indian citizen;

(2) such Indian citizen provides a written request to the Secretary for payment of all or a portion of such proceeds for purchase of property to be held in restricted status;

(3) such Indian citizen has not executed a written waiver of his or her right to acquire other property in restricted status pursuant to section 101; and

(4) such restrictions appear in the conveyance to the Indian citizen with certification by the Secretary that the requirements of this section have been met.

(b) FAIR MARKET VALUE IN EXCESS OF PROCEEDS.—If the fair market value of any property designated under subsection (a) exceeds the amount of proceeds that are derived from the conveyance or condemnation involved, a specific tract of land within the property shall be designated by the Indian citizen for placement in restricted status. The size of the restricted tract of land so designated shall be in the same proportion to the whole of the property as the proceeds derived from the conveyance or condemnation bears to the fair market value of the whole of the property. Such restrictions shall appear

on the face of the deed with certification by the Secretary describing that portion of the property which is subject to restrictions and certifying that the requirements of this section have been met.

SEC. 103. RESTRICTED FUNDS.

(a) IN GENERAL.—All funds and securities held or supervised by the Secretary derived from restricted property or individual Indian trust property on or after the effective date of this Act, including proceeds from any conveyance or condemnation as provided for in section 102, are declared to be restricted and shall remain subject to the jurisdiction of the Secretary until or unless otherwise provided for by Federal law.

(b) USE OF FUNDS.—Funds, securities, and proceeds described in subsection (a) may be released or expended by the Secretary for the use and benefit of the Indian citizens to whom such funds, securities, and proceeds belong, as provided for by Federal law.

SEC. 104. PERIOD OF RESTRICTIONS.

Subject to the provisions of this Act that permit restrictions to be removed, the period of restriction against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances of restricted property and funds belonging to Indian citizens, is hereby extended until an Act of Congress determines otherwise.

SEC. 105. REMOVAL OF RESTRICTIONS.

(a) PROCEDURE.—

(1) APPLICATION.—An Indian citizen who owns restricted property, or the legal guardian of a minor Indian citizen or an Indian citizen who has been determined to be legally incompetent by a court of competent jurisdiction (including a tribal court), may apply to the Secretary for an order removing restrictions on any interest in restricted property held by such Indian citizen.

(2) CONSIDERATION OF APPLICATION.—An application under paragraph (1) shall be considered by the Secretary only as to the tract, tracts, or severed mineral or surface interest described in the application. Not later than 90 days after the date on which an application is submitted, the Secretary shall either issue the removal order or disapprove the application.

(3) DISAPPROVAL.—The Secretary shall disapprove an application under paragraph (1) if—

(A) in the Secretary's judgment, the applicant has been subjected to fraud, undue influence, or duress by a third party; or

(B) the Secretary determines it is otherwise not in the Indian citizen owner's best interest.

(b) REMOVAL OF RESTRICTIONS.—When an order to remove restrictions becomes effective under subsection (a), the Secretary shall issue a certificate describing the property and stating that the Federal restrictions have been removed.

(c) SUBMISSION OF LIST.—Prior to or on April 1 of each year, the Secretary shall cause to be filed with the county treasurer of each county in the State of Oklahoma where restricted property is situated, a list of restricted property that has lost its restricted status during the preceding calendar year through acquisition of ownership by an individual or entity who is not an Indian citizen or by removal of restrictions pursuant to this section.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) abrogate valid existing rights to property that is subject to an order to remove restrictions under this section; and

(2) remove restrictions on any other restricted property owned by the applicant.

SEC. 106. EXEMPTIONS FROM PRIOR CLAIMS.

Sections 4 and 5 of the Act of May 27, 1908 (35 Stat. 312, chapter 199), shall apply to all restricted property.

SEC. 107. FRACTIONAL INTERESTS.

Upon application by an Indian citizen owner of an undivided unrestricted interest in property of which a portion of the interests in such property is restricted as of the effective date of this Act, the Secretary is authorized to convert that unrestricted interest into restricted status if all of the interests in the property are owned by Indian citizens as tenants in common as of the date of the application under this section.

TITLE II—ADMINISTRATIVE APPROVAL OF CONVEYANCES, PARTITIONS, LEASES, AND MORTGAGES; MANAGEMENT OF MINERAL INTERESTS

SEC. 201. APPROVAL AUTHORITY FOR CONVEYANCES AND LEASES.

The Secretary shall have exclusive jurisdiction to approve conveyances and leases of restricted property by an Indian citizen or by any guardian or conservator of any Indian citizen who is a ward in any guardianship or conservatorship proceeding pending in any court of competent jurisdiction, except that petitions for such approvals that are filed in Oklahoma district courts prior to the effective date of this Act may be heard and approved by such courts pursuant to the procedures described in section 1 of the Act of August 4, 1947 (61 Stat. 731, chapter 458), as

in effect on the day before the effective date of this Act, if the Indian citizen does not revoke in writing his or her consent to the conveyance or lease prior to final court approval.

SEC. 202. APPROVAL OF CONVEYANCES.

(a) PROCEDURE.—

(1) IN GENERAL.—Except as provided in subsection (b), restricted property may be conveyed by an Indian citizen pursuant to the procedures described in this subsection.

(2) REQUIREMENTS.—An Indian citizen may only convey restricted property—

(A) after the property is appraised by the Secretary;

(B) for an amount that is not less than 90 percent of the appraised value of the property;

(C) to the highest bidder through the submission to the Secretary of closed, silent bids or negotiated bids; and

(D) upon the approval of the Secretary.

(b) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding subsection (a)(2), an Indian citizen may convey his or her restricted property, or any portion thereof, to any of the individuals or entities described in paragraph (2)

without soliciting bids, providing notice, or for consideration which is less than the appraised value of the property, if the Secretary determines that the conveyance is not contrary to the best interests of the Indian citizen and that the Indian citizen has been duly informed of and understands the fair market appraisal, and is not being coerced into the conveyance.

(2) INDIVIDUALS AND ENTITIES.—An individual or entity described in this paragraph is—

(A) the Indian citizen's spouse (if he or she is an Indian citizen), father, mother, son, daughter, brother or sister, or other lineal descendant, aunt or uncle, cousin, niece or nephew, or Indian co-owner; or

(B) the Indian Nation whose last treaty boundaries encompassed the restricted property involved so long as the appraisal of the property was conducted by an independent appraiser not subject to the Indian Nation's control.

(c) STATUS.—Restricted property that is acquired by an Indian Nation whose last treaty boundaries encompassed the restricted property shall continue to be Indian country. Upon application by the Indian Nation, the Secretary shall accept title to such property in trust by the

United States for the benefit of the Indian Nation, except that the Secretary may first require elimination of any existing liens or other encumbrances in order to comply with applicable Federal title standards. The Secretary shall accept title to the property in trust for the Indian Nation only if, after conducting a survey for hazardous substances, he determines that there is no evidence of such substances on the property.

SEC. 203. REIMPOSITION OF RESTRICTIONS ON CONVEYANCES OF PROPERTY TO INDIAN HOUSING AUTHORITIES.

(a) IN GENERAL.—In any case where the restrictions have been removed from restricted property for the purpose of allowing conveyances of the property to Indian housing authorities to enable such authorities to build homes for individual owners or relatives of owners of restricted property, the Secretary shall issue a Certificate of Restricted Status describing the property and imposing restrictions thereon upon written request by the Indian citizen homebuyer or a successor Indian citizen homebuyer. Such request shall include evidence satisfactory to the Secretary that the homebuyer's contract has been paid in full and be delivered to the Regional Office not later than 3 years after the housing authority conveys such property back to the original Indian citizen homebuyer or

a successor Indian citizen homebuyer who is a citizen of the Nation whose last treaty boundaries encompass the property where the home is located.

(b) EXISTING LIENS.—Prior to issuing a certificate under subsection (a) with respect to property, the Secretary may require the elimination of any existing liens or other encumbrances which would substantially interfere with the use of the property.

(c) APPLICATION TO CERTAIN HOMEBUYERS.—Indian citizen homebuyers described in subsection (a) who acquired ownership of property prior to the effective date of this Act shall have 3 years from such effective date to request that the Secretary issue a certificate under such subsection.

(d) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to limit or affect the rights of Indian citizens described in this section under other Federal laws and regulations relating to the acquisition and status of trust property.

SEC. 204. ADMINISTRATIVE PARTITION.

(a) JURISDICTION.—Except as provided in section 304, the Secretary shall have exclusive jurisdiction to approve the partition of property located within the last treaty boundaries of 1 or more of the Five Nations, all of which is held in common, in trust, or in restricted status,

by more than 1 Indian citizen owner, if the requirements of this section are complied with. The Secretary may approve the voluntary partition of property consisting of both restricted and unrestricted undivided interests if all owners of the unrestricted interests consent to such approval in writing.

(b) PARTITION WITHOUT APPLICATION.—If the Secretary determines that any property described in subsection (a) is capable of partition in kind to the advantage of the owners, the Secretary may initiate partition of the property by—

(1) notifying the owners of such determination;

(2) providing the owners with a partition plan for such property; and

(3) affording the owners a reasonable time to respond, object, or consent to the proposal, in accordance with subsection (d).

(c) APPLICATION FOR PARTITION.—

(1) IN GENERAL.—An owner or owners of an undivided interest in any property described in subsection (a) may make written application, on a form approved by the Secretary, for the partition of their trust or restricted property.

(2) DETERMINATION.—If, based on an application submitted under paragraph (1), the Secretary

determines that the property involved is susceptible to partition in kind, the Secretary shall initiate partition of the property by—

(A) notifying the owners of such determination;

(B) providing the owners with a partition plan; and

(C) affording the owners a reasonable time to respond, object, or consent in accordance with subsection (d).

(d) PARTITION PROCEDURES.—

(1) PROPOSED LAND DIVISION PLAN.—The Secretary shall give applicants under subsection (c) and nonpetitioning owners of property subject to partition under this section with a reasonable opportunity to negotiate a proposed land division plan for the purpose of securing ownership of a tract on the property equivalent to their respective interests in the undivided estate, prior to taking any action related to partition of the property under this section.

(2) APPROVAL.—If a plan under paragraph (1) is approved by—

(A) Indian citizen owners of more than 50 percent of the property which is entirely in trust status (as distinguished from restricted

status) and if the Secretary finds the plan to be reasonable, fair, and equitable, the Secretary shall issue an order partitioning the trust property in kind; or

(B) the Indian citizens who own more than 50 percent of the undivided interests which are held in restricted status (as distinguished from trust status) and if the Secretary finds the plan to be reasonable, fair, and equitable, the Secretary may attempt to negotiate for partition in kind or for sale of all or a portion of the property, and secure deeds from all interest owners, subject to the Secretary's approval.

(3) LIMITATION.—No partition under paragraph (2)(B) shall be effected unless all of the owners have consented to the plan in writing.

SEC. 205. SURFACE LEASES.

The surface of restricted property may be leased by an Indian citizen pursuant to the Act of August 9, 1955 (25 U.S.C. 415 et seq.), except that the Secretary may approve any agricultural lease or permit with respect to restricted property in accordance with the provisions of section 105 of the American Indian Agricultural Resource Management Act (25 U.S.C. 3715).

SEC. 206. MINERAL LEASES.

(a) APPROVAL.—

(1) GENERAL RULE.—No mineral lease or agreement purporting to convey or create any interest in restricted or trust property that is entered into or renewed after the effective date of this Act shall be valid unless approved by the Secretary.

(2) REQUIREMENTS.—The Secretary may approve a mineral lease or agreement described in paragraph (1) only if—

(A) the owners of a majority of the undivided interest in the restricted or trust mineral estate that is the subject of the mineral lease or agreement (including any interest covered by a lease or agreement executed by the Secretary under subsection (c)) consent to the lease or agreement;

(B) the Secretary determines that approving the lease or agreement is in the best interest of the Indian citizen owners of the restricted or trust mineral interests; and

(C) the Secretary has accepted the highest bid for such lease or agreement after a competitive bidding process has been conducted by the Secretary, unless the Secretary has determined that it is in the best interest of the Indian citi-

zen to award a lease made by negotiation, and the Indian citizen so consents.

(b) EFFECT OF APPROVAL.—Upon the approval of a mineral lease or agreement by the Secretary under subsection (a), the lease or agreement shall be binding upon all owners of the restricted or trust undivided interests subject to the lease or agreement (including any interest owned by an Indian tribe) and all other parties to the lease or agreement, to the same extent as if all of the Indian citizen owners of the restricted or trust mineral interests involved had consented to the lease or agreement.

(c) EXECUTION OF LEASE OR AGREEMENT BY SECRETARY.—The Secretary may execute a mineral lease or agreement that affects restricted or trust property interests on behalf of an Indian citizen owner if that owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined, or if the heirs or devisees have been determined but one or more of the heirs or devisees cannot be located.

(d) DISTRIBUTION OF PROCEEDS.—The proceeds derived from a mineral lease or agreement approved by the Secretary under subsection (a) shall be distributed in accordance with the interest held by each owner pursuant to such rules and regulations as may be promulgated by the Secretary.

(e) COMMUNITIZATION AGREEMENTS.—No unleased restricted or trust property located within a spacing and drilling unit approved by the Oklahoma Corporation Commission may be drained of any oil or gas by a well within such unit without a communitization agreement prepared and approved by the Secretary, except that in the event of any such drainage without a communitization agreement approved by the Secretary, 100 percent of all revenues derived from the production from any such restricted or trust property shall be paid to the Indian citizen owner free of all lifting and other production costs.

SEC. 207. MANAGEMENT OF MINERAL INTERESTS.

(a) OIL AND GAS CONSERVATION LAWS.—

(1) IN GENERAL.—The oil and gas conservation laws of the State of Oklahoma shall apply to restricted property.

(2) ENFORCEMENT.—The Oklahoma Corporation Commission shall have the authority to perform ministerial functions related to the enforcement of the laws referred to in paragraph (1), including enforcement actions against well operators, except that no order of the Corporation Commission affecting restricted Indian property shall be valid as to such property until such order is submitted to and approved by the Secretary.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the Indian Nations to protect the environment and natural resources of restricted property.

(b) IMPLEMENTATION OF FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT.—Beginning on the effective date of this Act, the Secretary shall exercise all the duties and responsibilities of the Secretary under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702 et seq.) with respect to an oil and gas lease where—

(1) the Secretary has approved the oil and gas lease pursuant to section 206(a);

(2) the Secretary has, prior to the effective date of this Act, approved the oil and gas lease pursuant to the Act of May 27, 1908 (35 Stat. 312, chapter 199); or

(3) the Secretary has, before the effective date of this Act, approved an oil and gas lease of lands of any of the Five Nations pursuant to the Act of May 11, 1938 (25 U.S.C. 396a et seq.).

SEC. 208. MORTGAGES.

An Indian citizen may mortgage restricted property only in accordance with and under the authority of the Act of March 29, 1956 (25 U.S.C. 483a), or other Federal

laws applicable to the mortgaging of individual Indian trust property or restricted property.

TITLE III—PROBATE, HEIRSHIP DETERMINATION, AND OTHER JUDICIAL PROCEEDINGS

SEC. 301. ACTIONS AFFECTING RESTRICTED PROPERTY.

The courts of the State of Oklahoma shall not have jurisdiction over actions affecting title to, or use or disposition of, trust property or restricted property except as authorized by this Act or by other Federal laws applicable to trust property or restricted property.

SEC. 302. HEIRSHIP DETERMINATIONS AND PROBATES.

(a) JURISDICTION.—Except as provided in section 306, the Secretary shall have exclusive jurisdiction, acting through an administrative law judge or other official designated by the Secretary, to probate wills or otherwise determine heirs of deceased Indian citizens and to adjudicate all such estate actions to the extent that they involve individual trust property, restricted property, or restricted or trust funds or securities held or supervised by the Secretary derived from such property.

(b) GOVERNING LAWS.—Notwithstanding any other provision of law, the administrative law judge or other official designated by the Secretary shall exercise the Secretary's jurisdiction and authority under this section in

accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) and such rules and regulations which heretofore have been, or will be, prescribed by the Secretary for the probate of wills, determination of heirs, and distribution of property in estates of Indian decedents, subject to the following requirements:

(1) LAW APPLICABLE TO ESTATES OF INDIAN CITIZEN DECEDENTS WHO DIED PRIOR TO EFFECTIVE DATE.—The administrative law judge or other official designated by the Secretary shall apply the laws of descent and distribution of the State of Oklahoma contained in title 84 of the Oklahoma Statutes, chapter 4, to all restricted property, trust property, and all restricted or trust funds or securities derived from such property in the estates of deceased Indian citizens who died intestate prior to the effective date of this Act.

(2) LAW APPLICABLE TO WILLS EXECUTED PRIOR TO EFFECTIVE DATE.—The administrative law judge or other official designated by the Secretary shall determine the validity and effect of wills as to estates containing trust property or restricted property when such wills were executed by Indian citizens prior to the effective date of this Act, in accordance with the laws of the State of Oklahoma

governing the validity and effect of wills, provided that the will of a full-blood Indian citizen which disinherits the parent, wife, spouse, or children of such citizen shall not be valid with respect to the disposition of restricted property unless the requirements of section 23 of the Act of April 26, 1906 (34 Stat. 137, chapter 1876), as in effect on the day before the effective date of this Act, are met.

(3) LAW APPLICABLE TO WILLS EXECUTED AFTER EFFECTIVE DATE.—

(A) IN GENERAL.—Any Indian citizen who has attained age 18 and owns restricted property or trust property shall have the right to dispose of such property by will, executed on or after the effective date of this Act in accordance with regulations which heretofore have been, or will be, prescribed by the Secretary for the probate of wills, provided—

(i) no will so executed shall be valid or have any force or effect unless and until such will has been approved by the Secretary; and

(ii) that the Secretary may approve or disapprove such will either before or after the death of the Indian citizen testator.

(B) FRAUD.—In any case where a will has been approved by the Secretary under subparagraph (A) and it is subsequently discovered that there was fraud in connection with the execution or procurement of the will, the Secretary is authorized, within 1 year after the death of the testator, to cancel approval of the will. If an approval is canceled in accordance with the preceding sentence, the property purported to be disposed of in the will shall descend or be distributed in accordance with the Secretary's rules and regulations applicable to estates of Indian decedents who die intestate.

(4) FEDERAL LAW CONTROLS.—Notwithstanding any other provision of this section, Federal law governing personal claims against a deceased Indian citizen or against trust property or restricted property, including the restrictions imposed by this Act or other applicable Federal law against the alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances of trust property or restricted property shall apply to all such property contained in the estate of the deceased Indian citizen.

SEC. 303. ACTIONS TO CURE TITLE DEFECTS.

(a) JURISDICTION.—Except as provided in subsections (b) and (c), the United States district courts in the State of Oklahoma and the State courts of Oklahoma shall retain jurisdiction over actions seeking to cure defects affecting the marketability of title to restricted property, except that all such actions shall be subject to the requirements of section 305.

(b) ADVERSE POSSESSION.—No cause of action may be brought to claim title to or an interest in restricted property by adverse possession or the doctrine of laches on or after the effective date of this Act, except that—

(1) all such causes that are pending on the effective date of this Act in accordance with the provisions of section 3 of the Act of April 12, 1926 (44 Stat. 239, chapter 115), shall be subject to section 306; and

(2) an action to quiet title to an interest in restricted property on the basis of adverse possession may be filed in the courts of the State of Oklahoma provided that all requirements of Oklahoma law for acquiring title by adverse possession, including the running of the full 15-year limitations period, have been met prior to the effective date of this Act and the procedures set forth in section 305 shall be followed; provided, however, the claimant in any such

action must show by clear and convincing evidence that the limitations period had run in full prior to the effective date of this Act.

(c) HEIRSHIP DETERMINATIONS AND DISPOSITIONS.—Nothing in this section shall be construed to authorize a determination of heirs in a quiet title action in Federal or State court in derogation of the Secretary's exclusive jurisdiction to probate wills or otherwise determine heirs of the deceased Indian citizens owning restricted property and to adjudicate all such estate actions involving restricted property pursuant to section 302, or in derogation of the Secretary's exclusive jurisdiction over the disposition of restricted property under this Act. Provided, any grantee of an heir who, prior to the effective date of this Act and in accordance with applicable Federal laws, conveyed, leased, or otherwise encumbered his or her interest in the restricted property of an unprobated estate of an Indian citizen decedent shall have standing to request that the Secretary determine the heirs of the decedent in order to establish marketable title in said grantee. For purposes of this subsection the term grantee shall include any grantee, lessee, or mortgagee of such heir and any successors or assigns of such grantee.

SEC. 304. INVOLUNTARY PARTITIONS.

(a) JURISDICTION.—The United States district courts in the State of Oklahoma and the State courts of Oklahoma shall retain jurisdiction over actions for the involuntary partition of property consisting entirely or partially of undivided restricted interests, subject to the provisions of subsections (b) through (e) and the requirements in section 306.

(b) APPLICABLE LAW.—The laws of the State of Oklahoma governing the partition of property shall be applicable to all actions for involuntary partition under this section, except to the extent that any such laws are in conflict with any provisions of this Act.

(c) PETITION; CONSENT OF OWNERS OF MAJORITY OF UNDIVIDED INTERESTS.—Any person who owns an undivided interest in a tract of property described in subsection (a) may file an action in the district court of the State of Oklahoma for the county wherein the tract is located for the involuntary partition of such tract. The court shall not grant the petition unless the owner or owners of more than 50 percent of the tract consent to the partition in the verified petition or verified answer filed in the action.

(d) PAYMENT TO NONCONSENTING OWNERS OF RESTRICTED INTERESTS.—Nonconsenting owners of undi-

vided restricted interests shall receive for the sale of such interests their proportionate share of the greater of—

(1) the proceeds paid at the partition sale; or

(2) an amount equal to 100 percent of the appraised value of the tract.

(e) COSTS.—A nonconsenting Indian citizen owner of restricted interests shall not be liable for any filing fees or costs of an action under this section, including the cost of an appraisal, advertisement, and sale, and no such costs shall be charged against such nonconsenting owner's share of the proceeds of sale.

SEC. 305. REQUIREMENTS FOR ACTIONS TO CURE TITLE DEFECTS AND INVOLUNTARY PARTITIONS.

(a) IN GENERAL.—All actions authorized by sections 303 and 304 shall be conducted in accordance with the requirements and procedures described in this section.

(b) PARTIES.—

(1) UNITED STATES.—The United States shall not be a necessary and indispensable party to an action authorized under section 303 or 304. The Secretary may participate as a party in any such action.

(2) PARTICIPATION OF SECRETARY.—If the Secretary elects to participate in an action as provided for under paragraph (1), the responsive pleading of the Secretary shall be made not later than 20

days after the Secretary receives the notice required under subsection (c), or within such extended time as the trial court in its discretion may permit.

(3) JUDGMENT BINDING.—After the appearance of the Secretary in any action described in paragraph (1), or after the expiration of the time in which the Secretary is authorized to respond under paragraph (2), the proceedings and judgment in such action shall be binding on the United States and the parties upon whom service has been made and shall affect the title to the restricted property which is the subject of the action, in the same manner and extent as though nonrestricted property were involved.

(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to waive the requirement of service of summons in accordance with applicable Federal or State law upon the individual Indian citizen landowners, who shall be necessary and indispensable parties to all actions authorized by sections 303 and 304.

(c) NOTICE.—

(1) IN GENERAL.—The plaintiff in any action authorized by sections 303 and 304 shall serve written notice of the filing of such action and of a peti-

tion or complaint, or any amended petition or complaint which substantially changes the nature of the action or includes a new cause of action, upon the Director of the Regional Office not later than 10 days after the filing of any such petition or complaint or any such amended petition or complaint.

(2) FILING WITH CLERK.—A duplicate original of any notice served under paragraph (1) shall be filed with the clerk of the court in which the action is pending.

(3) REQUIREMENTS.—The notice required under paragraph (1) shall—

(A) be accompanied by a certified copy of all pleadings on file in the action at the time of the filing of the duplicate original notice with the clerk under paragraph (2);

(B) be signed by the plaintiff to the action or his or her counsel of record; and

(C) be served by certified mail, return receipt requested, and due return of service made thereon, showing date of receipt and service of notice.

(4) FAILURE TO SERVE.—If the notice required under paragraph (1) is not served within the time required under such paragraph, or if return of serv-

ice thereof is not made within the time permitted by law for the return of service of summons, alias notices may be provided until service and return of notice is made, except that in the event that service of the notice required under such paragraph is not made within 60 days following the filing of the petition or complaint or amendments thereof, the action shall be dismissed without prejudice.

(5) LIMITATION.—In no event shall the United States or the parties named in a notice filed under paragraph (1) be bound, or title to the restricted property be affected, unless written notice is served upon the Director as required under this subsection.

(d) REMOVAL.—

(1) IN GENERAL.—The United States shall have the right to remove any action to which this section applies that is pending in a State court to the United States district court by filing with the State court, not later than 20 days after the service of any notice with respect to such action under subsection (c), or within such extended period of time as the trial court in its discretion may permit, a notice of the removal of such action to such United States district court, together with the certified copy

of the pleadings in such action as served on the Director of the Regional Office under subsection (c).

(2) DUTY OF STATE COURT.—It shall be the duty of a State court to accept a notice filed under paragraph (1) and cease all proceedings with respect to such action.

(3) PLEADINGS.—Not later than 20 days after the filing of a notice under paragraph (1), the copy of the pleadings involved (as provided under such paragraph) shall be entered in the district court of the United States and the defendants and intervenors in such action shall, not later than 20 days after the pleadings are so entered, file a responsive pleading to the complaint in such action.

(4) PROCEEDINGS.—Upon the submission of the filings required under paragraph (3), the action shall proceed in the same manner as if it had been originally commenced in the district court, and its judgment may be reviewed by certiorari, appeal, or writ of error in like manner as if the action had been originally brought in such district court.

SEC. 306. PENDING STATE PROCEEDINGS.

The courts of the State of Oklahoma shall continue to exercise authority as a Federal instrumentality over all heirship, probate, partition, and other actions involving re-

stricted property that are pending on the effective date of this Act until the issuance of a final judgment and exhaustion of all appeal rights in any such action, or until the petitioner, personal representative, or the State court dismisses the action in accordance with State law.

TITLE IV—MISCELLANEOUS

SEC. 401. REGULATIONS.

The Secretary may promulgate such regulations as may be necessary to carry out this Act, except that failure to promulgate such regulations shall not limit or delay the effect of this Act.

SEC. 402. VALIDATION OF CERTAIN TRANSACTIONS; SAVINGS CLAUSE.

(a) VALIDATION OF CERTAIN TITLE TRANSACTIONS.—Any person having the legal capacity to own real property in the State of Oklahoma who claims ownership of an interest in such property through an unbroken chain of title of record, the title to which interest is or may be defective as a result of any transaction described in paragraphs (1) through (5) of this subsection that occurred in such chain of title, may cure the defect in title and validate the transaction by following the procedures of this section. When all conditions and requirements of this section have been met, and if no notice of objection has been timely filed by the Regional Director under sub-

section (c) or by any other person under subsection (f), the transaction shall be validated and shall not be considered a defect in the muniments of title but only insofar as the defect is based on or arises from Federal statutes applicable to the conveyance or inheritance of restricted property in effect at the time of the transaction.

(1) Any probate order issued by a county court of the State of Oklahoma prior to the effective date of the Act of June 14, 1918, 40 Stat. 606, purporting to probate the estate of a deceased Indian citizen who died owning property which was subject to restrictions against alienation pursuant to Federal statutes in effect at the time of issuance of such probate order;

(2) Any probate order issued by a county or district court of the State of Oklahoma more than 30 years prior to the effective date of this Act purporting to probate the estate of a deceased Indian citizen who died owning property which was subject to restrictions against alienation pursuant to Federal law in effect at the time of issuance of such probate order, where notice was not given as required by Federal statutes in effect at the time;

(3) Any conveyance of record, including an oil and gas or mineral lease, of an interest in individual

trust property or property which was subject to restrictions against alienation pursuant to Federal statutes in effect at the time of the conveyance executed by a person who was an heir or purported heir of the decedent, if such conveyance was approved by a county or district court in Oklahoma more than 30 years before the effective date of this Act but where no judicial or administrative order of record was issued before or after such approval finding that such person was in fact the heir to the interest conveyed;

(4) Any conveyance of record, including an oil and gas or mineral lease, of individual trust property or property which was subject to restrictions against alienation pursuant to Federal statutes in effect at the time of the conveyance that was approved by a county or district court in Oklahoma or by the Secretary more than 30 years before the effective date of this Act, where—

(A) approval was not in compliance with the notice requirements of Federal statutes governing the conveyance of said individual trust property or said restricted property; or

(B) approval was given by a county or district court in Oklahoma of a conveyance of the

property by a personal representative in a probate action over which said county or district court possessed jurisdiction, without compliance with Federal statutes governing the conveyance of the property in effect at the time of the conveyance;

(5) Any conveyance of record, including an oil and gas or mineral lease, of individual trust property or property which was subject to restrictions against alienation pursuant to Federal statutes in effect at the time of the conveyance that was approved by a county or district court in Oklahoma or by the Secretary at any time before the effective date of this Act, where—

(A) approval was given by the Secretary where the Federal statutes governing the conveyance of the property required approval by a county or district court in Oklahoma; or

(B) approval was given by a county or district court in Oklahoma where the Federal statutes governing the conveyance of the property in effect at the time of the conveyance required approval of the Secretary.

(b) NOTICE OF CLAIM; SERVICE AND RECORDING.—Any claimant described in subsection (a) must serve writ-

ten notice of his or her claim by certified mail, return receipt requested, on the Regional Director, and file the notice of claim, together with a copy of the return receipt showing delivery to the office of the Regional Director, in the office of county clerk in the county or counties wherein the property is located. The notice shall not be complete for the purposes of this section until it has been served on the Regional Director and filed of record as herein provided. The notice of claim shall set forth the following:

(1) The claimant's name and mailing address.

(2) An accurate and full description of all property affected by such notice, which description –shall be set forth in particular terms and not be general inclusions; but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument.

(3) A specific reference to or description of each title transaction in the chain of title that the claimant is attempting to validate pursuant to this section.

(4) A list of all documents of record that are part of the claimant's unbroken chain of title, copies of which documents shall be served with the notice.

(c) RESPONSE DEADLINE; EXTENSION.—The Regional Director shall have 60 days from date of receipt of the notice of claim in which to notify the claimant in writing that the Regional Director exercises discretionary authority to object to the claim for any reason; provided, the Regional Director shall be entitled to an automatic extension of time of 60 days in which to object to the claim upon the Regional Director's service of written notice of extension on the claimant within the initial 60-day response period.

(d) NOTICE OF OBJECTION; REMEDIES.—The Regional Director shall send the notice of objection and any notice of extension of time to the claimant by certified mail to the address set forth in the claimant's notice to the Director. The Director's notice of objection or notice of extension of time shall include a description of the property and shall be effective on the date of mailing. The Director shall file the notice of objection or notice of extension of time in the office of the county clerk for the county or counties wherein the property is located within 30 days after the date of mailing of the notice to the claimant. If the Regional Director notifies the claimant that the Regional Director objects to the claim, such decision shall be final for the Department and the claimant's sole remedies shall be to file an action to cure title defects pursu-

ant to section 303 of this Act or to request a determination of heirs in accordance with section 302 of this Act.

(e) UNDISPUTED CLAIM.—If, in the exercise of discretion, the Regional Director does not object to the claim, then the Regional Director may notify the claimant that the matter is not in dispute. Failure of the Regional Director to notify the claimant of the Regional Director's objection within the initial 60-day period, or within the 60-day extension period if notice of an extension was given, shall constitute acceptance of the claim. If the Director does not file an objection to the claim of record within the time required by subsection (d), the title transaction described in the claimant's notice shall be deemed validated and shall not be considered a defect in the muniments of the claimant's title based on or arising from Federal statutes governing the conveyance of restricted property in effect at the time of the transaction, provided that no written notice of objection is timely filed by other parties in accordance with subsection (f) of this section.

(f) NOTICE OF OBJECTION BY OTHER PARTIES TO APPLICABILITY OF THIS SECTION.—Any person claiming ownership of an interest in property the record title to which includes a title transaction described in subsection (a) of this section may prevent the application of subsections (a) through (e) to said interest by filing for record

in the office of the county clerk for the county or counties wherein the property in question is located, no later than 3 years after the effective date of this Act, a written notice of objection in the form of a declaration made under oath setting forth the following:

(1) The declarant's name and mailing address.

(2) An accurate and full description of all of the declarant's property interests to be affected by such notice, which description shall be set forth in particular terms and not be general inclusions; but if said declarant's claim to ownership is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument.

(3) A statement that the declarant claims in good faith to be the owner of an interest in the property described in the notice and that the declarant objects to the operation of this section with respect to any title transaction that would otherwise be subject to validation under this section.

(g) INTERESTS OF HEIRS OF LESS THAN HALF-BLOOD.—Nothing in this Act shall be construed to invalidate—

(1) any conveyance of record, including a surface, oil and gas, or mineral lease, of an interest in

property made prior to the effective date of this Act by an heir of a deceased Indian citizen without district court approval where such heir was of less than one-half degree of Indian blood, even though the property was held in restricted status immediately prior to the decedent Indian citizen's death; or

(2) any other encumbrance that attached prior to the effective date of this Act to an interest in property of an heir of a deceased Indian citizen where such heir was of less than one-half degree of Indian blood, even though the property was held in restricted status immediately prior to the decedent Indian citizen's death.

(h) TERMS.—For purposes of this section:

(1) A person shall be deemed to have an unbroken chain of title when the official public records, including probate and other official public records, as well as records in the county clerk's office, disclose a conveyance or other title transaction of record not less than 30 years prior to the effective date of this Act, which said conveyance or other title transaction purports to create such interest, either in—

(A) the person claiming such interest; or

(B) some other person from whom, by 1 or more conveyances or other title transactions of

record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

(2) The term recording, when applied to the official public records of any officer or court, includes filing with the officer or court.

SEC. 403. REPEALS.

(a) IN GENERAL.—The following provisions are repealed:

(1) The Act of August 11, 1955 (69 Stat. 666, chapter 786).

(2) Section 2 of the Act of August 12, 1953 (67 Stat. 558, chapter 409).

(3) Sections 1 through 5 and 7 through 13 of the Act of August 4, 1947 (61 Stat. 731, chapter 458).

(4) The Act of February 11, 1936 (25 U.S.C. 393a).

(5) The Act of January 27, 1933 (47 Stat. 777, chapter 23).

(6) Sections 1, 2, 4, and 5 of the Act of May 10, 1928 (45 Stat. 495, chapter 517).

(7) The Act of April 12, 1926 (44 Stat. 239, chapter 115).

(8) Sections 1 and 2 of the Act of June 14, 1918 (25 U.S.C. 375 and 355).

(9) Sections 1 through 3 and 6 through 12 of the Act of May 27, 1908 (35 Stat. 312, chapter 199).

(10) Section 23 of the Act of April 26, 1906 (34 Stat. 137, chapter 1876).

(b) OTHER ACTS.—

(1) IN GENERAL.—Not later than 6 months after the effective date of this Act, the Secretary shall prepare and submit to Congress a list of other provisions of law that—

(A) expressly reference property of the Five Nations or of Five Nations' citizens and that are in conflict with the provisions of this Act; or

(B) are of general applicability with respect to the property of Indian tribes and of individual Indians and that are in conflict with this Act.

(2) TECHNICAL AMENDMENTS.—

(A) Section 28 of the Act of April 26, 1906 (34 Stat. 137, chapter 1876) is amended—

(i) by striking the first proviso; and

(ii) by striking ''*Provided further*'' and inserting ''*Provided*''.

(B) Section 6(c) of the Act of August 4, 1947 (61 Stat. 733, chapter 458) is amended in the first sentence by striking ''of one-half or more Indian blood''.

(C) Section 1 of the Act of October 22, 1970 (84 Stat. 1091), is amended by striking the last sentence.

SEC. 404. SECRETARIAL TRUST RESPONSIBILITY.

Nothing in this Act shall be construed to waive, modify, or diminish in any way the trust responsibility of the United States over restricted property.

SEC. 405. REPRESENTATION BY ATTORNEYS FOR THE DEPARTMENT OF THE INTERIOR.

Attorneys of the Department of the Interior may—

(1) represent the Secretary in any actions filed in the State courts of Oklahoma involving restricted property;

(2) when acting as counsel for the Secretary, provide information to all Indian citizens owning re-

stricted property (and to private counsel for such citizens, if any) regarding their legal rights with respect to the restricted property owned by such citizens;

(3) at the request of any Indian citizen owning restricted property, take such action as may be necessary to cancel or annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be made or executed in violation of this Act or any other Federal law, and take such action as may be necessary to assist such Indian citizen in obtaining clear title, acquiring possession, and retaining possession of restricted property; and

(4) in carrying out paragraph (3), refer proposed actions to be filed in the name of the United States in a district court of the United States to the United States Attorney for that district, and provide assistance in an of-counsel capacity in those actions that the United States Attorney elects to prosecute.

SEC. 406. FILING REQUIREMENTS; CONSTRUCTIVE NOTICE.

The following orders or other decision documents which concern restricted property and are issued after the effective date of this Act by the Secretary, by an adminis-

trative law judge, or by any other authorized person pursuant to authority of this Act shall be filed in the Regional Office and in the office of the county clerk in the county where such restricted property is located: any order or other decision document removing restrictions, imposing restrictions, approving conveyances, approving leases, approving voluntary partitions, approving mortgages, probating wills or determining heirs, and any notice issued by the Regional Director pursuant to section 402 of this Act. The filing of said documents at the Regional Office shall constitute constructive notice to the public of the effect of said documents filed. The Secretary shall have authority to certify the authenticity of copies of such documents and title examiners shall be entitled to rely on said authenticated copies for the purpose of determining marketability of title to the property described therein.

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The CHAIRMAN. Thank you very much. Our first witness is the Deputy Assistant Secretary for Indian Affairs of the Department of the Interior, Aurene Martin.

Ms. Martin.

STATEMENT OF AURENE MARTIN, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. MARTIN. Good morning Mr. Chairman, Mr. Vice Chairman. My name is Aurene Martin, and I am the Deputy Assistant Secretary of Indian Affairs at the Department of the Interior. I'd like to thank you for the opportunity to provide testimony today on H.R. 2880.

H.R. 2880 amends laws relating to the Muscogee Creek, Seminole, Cherokee, Chickasaw, and Choctaw Nations, historically known as the Five Civilized Tribes. The administration supports this legislation.

H.R. 2880 seeks to rectify certain problems involving restrictive property, which results in unequal treatment of the lands compared to other Indian lands held in restrictive status elsewhere. Because of the unique historical situation that exists in Oklahoma, the Five Nations escaped the forced allotment of their lands authorized by the General Allotment Act.

However, since the Federal Government did not hold title to the lands, it did not have the legal authority to issue fee patents to Five Nation members, and instead, a complex system of Federal allotment laws developed, which currently governs and only applies to the Five Nations.

As a result of these laws, members and lineal descendants of the Five Nations have been subject to Oklahoma State court jurisdiction for administrative approval of a number of transactions involving restrictive Indian lands held by individual Indians who possess one-half or more degree Indian blood quantum.

In these matters, Oklahoma State courts may act on behalf of the Secretary of the Interior. This unique jurisdictional scheme is costly, cumbersome and confusing, and prevents meaningful estate planning for these individual Indian members.

By contrast, the same matters involving other Indian restricted lands are managed by the Department of the Interior, and no State court jurisdiction applies. Over the past several years, the Department has worked with the Five Nations to develop legislation which would end the disparity between the treatment of these lands and other similarly restricted Indian lands of other tribes.

H.R. 2880 would treat the Five Nation owners of these restricted lands in the same manner as other Indians who are owners of restricted lands. H.R. 2880 would also make several important changes to the Federal laws governing the restricted land held by individual Indians of the Five Nations. A number of the amendments it would make would include making all restricted properties subject to restrictions against alienation regardless of the blood degree of the Indian individual who owns the property. It would also allow an individual to use the proceeds from the conveyance of restricted property to purchase other property which may be held in restricted status.

H.R. 2880 would also give the Secretary of the Interior the exclusive jurisdiction to handle administrative matters dealing with these lands, including the ability to approve conveyances and leases, and the ability to probate wills or determine errors and adjudicate estate actions involving restricted properties. It also authorizes the Secretary to administer certain oil and gas leases.

I would like to reiterate our support for this bill which we believe is both consistent with the self-determination policy and self-sufficiency for tribes and tribal members. I would ask that my written testimony be entered into the written record. This concludes my testimony. I would be happy to answer any questions.

[Prepared statement of Ms. Martin appears in appendix.]

The CHAIRMAN. Thank you very much and your full statement will be made part of the record. If I may, in reading the testimony of the United Keetoowah Band, they argue that the historic Cherokee Nation as it existed prior to 1906 now consists of two tribes. The United Keetoowah Band and the Cherokee Nation of Oklahoma. As a result, this band is requesting that the bill be amended to clarify the definition of Five Nations, to include the United Keetoowah Band. Does the Department of the Interior view the United Keetoowah Band as descendants of the historic Cherokee Nation?

Ms. MARTIN. My understanding is that members of the United Keetoowah Band and the Cherokee Nation descend from the same population. I am not clear on whether our analysis has gone so far as to say they were all members of the historic Cherokee Nation, nor am I aware that we've made a determination whether the United Keetoowah Band and the historic Cherokee Nation share rights descending from the historic Cherokee Nation.

The CHAIRMAN. Does the Department recognize the United Keetoowah Band as a federally-recognized Indian tribe?

Ms. MARTIN. Yes; we do.

The CHAIRMAN. Does the Department believe that the United Keetoowah Band should be included within the definition of Five Nations?

Ms. MARTIN. We're still completing our legal analysis as to whether the United Keetoowah Band is a descendant of the historic Cherokee Nation and would be included in Five Nations legislation. So I can't really answer that right now, but I would like to followup in writing with you if that's okay.

The CHAIRMAN. Can you provide us with that response as soon as possible? We would like to report this measure out next week at the latest.

Ms. MARTIN. Yes.

The CHAIRMAN. Is it the Department's view that the bill allows restricted lands of the United Keetoowah Band members to escheat to the Cherokee Nation of Oklahoma?

Ms. MARTIN. Again, I'm not sure what our analysis is on that particular issue and I would have to get back to you on that, as well.

The CHAIRMAN. The Department is proposing an amendment to this bill. If the Senate were to pass H.R. 2880 in its current form, and follow that action with a bill to make technical necessary conforming amendments, would the Department object to proceeding

so that H.R. 2880 could be sent back to the House and directly to the White House without conference?

Ms. MARTIN. I believe that would be acceptable to the Department. That proposal has not been reviewed within the Department, but I don't think it would rise to the level of an objection if it were not made.

The CHAIRMAN. All right, thank you very much, Madame Secretary.

Mr. Vice Chairman.

Senator CAMPBELL. I understand that the provisions of the bill won't become effective until 2004. Is that correct?

Ms. MARTIN. Yes; I believe so.

Senator CAMPBELL. And that's in order to give the Department some time for to implement it, and I also understand the sponsors of the bill are willing to discuss whether that's time enough for the Department or not. Would you keep our committee informed as to the progress of that—those discussions so we can make any necessary changes if we have to?

Ms. MARTIN. Yes; I'd be happy to do that.

Senator CAMPBELL. Thank you, thank you Mr. Chairman.

The CHAIRMAN. Thank you very much, Madame Secretary.

Ms. MARTIN. Thank you.

The CHAIRMAN. Our next witness is Lindsay G. Robertson, special counsel on Indian Affairs to the Governor of Oklahoma, Frank Keating. Mr. Robertson, welcome sir.

STATEMENT OF LINDSAY G. ROBERTSON, SPECIAL COUNSEL ON INDIAN AFFAIRS TO GOVERNOR FRANK KEATING, UNIVERSITY OF OKLAHOMA COLLEGE OF LAW, NORMAN, OK

Mr. ROBERTSON. Thank you, Mr. Chairman, Vice-Chairman Campbell and other members of the committee for the opportunity to testify on behalf of Governor Frank Keating in support of H.R. 2880, the Five Nations Indian Land Reform Act.

The Five Nations—the Muscogee [Creek], Cherokee, Chickasaw, Choctaw, and Seminole Nations—have long constituted an important cultural and economic presence in Oklahoma. Through the execution of numerous compacts, the State of Oklahoma has in recent years had a constructive and mutually beneficial sovereign-to-sovereign relationship with each of these Nations.

This relationship has been complicated somewhat by the State's exercising of Federal trust functions in areas addressed by H.R. 2880. Specifically, due to the unique Federal legislative treatment of Five Nations' allotments, State courts have been required to act as Federal instrumentalities for the past 96 years in implementing Federal laws governing the disposition of these lands, including laws governing approval of sales, leases and probates of restricted property. In addition to complicating the relationship between the State and the Nations, this has placed an unusual burden on the Oklahoma judiciary.

The Governor has observed the development of the Five Nations Land Reform Act over the past several years. It was most recently introduced earlier this year in the U.S. House of Representatives as H.R. 2880 and a substitute version was approved by the House on June 11, 2002, after final concerns by various interest groups

were addressed. As currently written, this legislation will have a significant positive impact not only on individual Indian owners of Five Nations allotments, but also on non-Indian owners of former restricted property. It will also have a positive impact on the courts of the State of Oklahoma.

Although H.R. 2880 will require state courts to continue to exercise limited jurisdiction over partitions and quiet title actions involving restricted lands, it will return most Federal trust functions back to the Federal Government. It will establish an efficient process for the approval of sales and leases of restricted property through a Federal administrative process. It will also facilitate the probate of estates containing restricted property by placing that function with the Federal Government, thus eliminating the costs necessarily associated with State court probate actions and enabling Indian heirs to secure probates at no cost through use of Federal administrative law judges.

H.R. 2880 also contains a number of provisions that are designed to protect vested property rights of third parties and establishes a more streamlined process for curing of title defects caused by complicated Federal law requirements affecting property that was formerly restricted. Thus, it will be beneficial to both Indian and non-Indian citizens in Oklahoma.

Although H.R. 2880 will slow the removal of lands from restricted status, it will not increase the restricted land base and will not have any negative impact on state and local tax revenues.

Governor Keating believes that Oklahoma citizens and interest groups have been afforded the opportunity to participate in the bill's evolution during the past few years. These groups have included the Probate Committee and the Real Property Section of the Oklahoma Bar Association, and the Indian Nations themselves. Indeed, the Nations have taken an active part in the drafting of the bill. He supports the enactment of H.R. 2880 into law, and he looks forward to seeing the positive impact that this important legislation will have on the citizens of Oklahoma. Thank you.

[Prepared statement of Mr. Robertson appears in appendix.]

The CHAIRMAN. Thank you very much. And will you send our greetings to the Governor?

Mr. ROBERTSON. I will gladly do so.

The CHAIRMAN. Thank you.

Our next panel consists first of the principal chief of the Cherokee Nation, Chad Smith; the principal chief of the Muscogee Nation, R. Perry Beaver, who will be accompanied by Wilbur Gouge, speaker of the Muscogee Creek National Council; the principal chief of the Choctaw Nation of Oklahoma, Greg Pyle; the Governor of the Chickasaw Nation, Bill Anoatubby, who will not be able to be with us today, but he sends us his prepared statement, and without objection, his full statement will be made part of the record.

[Prepared statement of Governor Anoatubby appears in appendix.]

The CHAIRMAN. May I first call upon the distinguished chief of the Cherokee Nation, Chad Smith.

STATEMENT OF HON. CHAD SMITH, PRINCIPAL CHIEF, CHEROKEE NATION, TAHLEQUAH, OK

Mr. SMITH. Thank you very much. Let me begin by thanking both of you, Chairman Inouye and Vice-Chairman Campbell for the opportunity to appear in front of you.

This is a unique opportunity to present our views in support of H.R. 2880, the Five Nations Indian Land Reform Act. I say that the opportunity is "unique" because although over the course of the 20th Century, the U.S. Congress has passed numerous laws-in fact, dozens of them-pertaining specifically to the allotted lands of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations, none of those laws was particularly good from the Indian perspective, and many if not most were quite bad.

On the other hand, H.R. 2880 will be good for the Indian landowners, and if passed into law it will be the first time in over 100 years that Congress has taken a truly dramatic step toward protecting the interests of Indian owners of restricted lands in eastern Oklahoma. This bill is good for individual Indians, it is not a bill that benefits tribes themselves. The working committee has accommodated the input of other tribes and has gone to extremes to focus this bill for the benefit of individual Indians, not to involve tribal issues or to make changes to current law regarding tribal entities.

In other words, the beneficiaries of this bill are the full-blooded Indians in Indian territories. It is a bill to help them hold on to the last remnants of Indian land within our tribal nations.

I would like to make this point, that the bill was the product of considerable work and input from many different perspectives, parties and interests. Our lawyers and realty staff, of course, had considerable input, but they worked with the members of the Oklahoma Bar Association, the Regional Central Office, the Bureau of Indian Affairs staff and attorneys, with the House Resources Committee, the House Legislative Council, the staff of this committee, for which we are very grateful. As a result, the bill reflects careful balancing of interest, Indian, non–Indian, Federal and local. It is a well-crafted piece of legislation that will benefit Indian country in eastern Oklahoma.

In 1930, the Indian Removal Act provided for the present exchange lands of the Five Tribes in the Old Country, the southeastern United States, Georgia, Tennessee, for those lands in Indian Territory west of the Mississippi. What is so unique about that situation is that—and distinguishes the Five Tribes from most of the other tribes in the country—is that the bill, the Indian Removal Act, allowed the presence to exchange the highest title that governments can exchange title, we received an exchange of fee patent. Actually, we have that fee patent framed at our historical site, a beautiful meets and bounds description of the Indian territory. The highest exchange of lands between governments.

The other tribes in the country received their lands in trust, the Federal government took title. We took title in our name. And that caused problems during the allotment period. We were not under the General Allotment Act like the rest of the tribes, but it was only with the Curtis Act that our lands were compelled to be allotted. The principal chief actually signed the allotment deeds to alottees.

And because of that historical scenario, our lands were treated differently, and that's because in the last 100 years, Congress, from time to time, has gone to treat the Five Tribes differently. As a result, you actually had in the Indian Country two kinds of allotments. Restricted allotments, in which the individual owns title but it's restricted from alienation, restricted from mortgaging, sale, gift [and] the trust allotments, the trust allotments being held in title by the Federal Government.

So we have two different statutory and administrative regimes. We believe this bill is important because it will conform the treatment of restrictive allotments to how trust allotments are treated, provides as has been testified earlier administrative procedures which will reduce the cost of probate and provide additional protections.

I would also invite your attention to the simple fact that from the total restricted land base in Oklahoma is only a tiny fraction of what it was 98 years ago, in fact, Cherokee restricted allotments are one-third of one percent of what they were at allotment.

This bill comes as a result of litigation in the 1980's in a case called *Walker* v. *United States,* and that case pointed out the failures of protections of restricted allotments. There's a great law review article and I encourage the committee to read it, if you ever can find the time, of course. It's called "Fatally Flawed: State Court Approval of Conveyances of the Five Civilized Tribes: Time for Legislative Reform." It was drafted by Timothy Vollmann and Sharon Blackwell in the Tulsa Law Review Journal.

I'll defer to the rest of the panel for discussion of the bill, but I certainly wish and encourage the Congress to pass this bill. It's needed reform, we sincerely appreciate it by not only the Cherokee Nation, the Five Tribes, but each of our citizens.

[Prepared statement of Mr. Smith appears in appendix.]

The CHAIRMAN. Thank you very much, principal chief Smith. And now may I call upon the distinguished principal chief of the Muscogee Nation, R. Perry Beaver.

STATEMENT OF R. PERRY BEAVER, PRINCIPAL CHIEF, MUSCOGEE [CREEK] NATION, OKMULGEE, OK, ACCOMPANIED BY WILBUR GOUGE, SPEAKER OF THE MUSCOGEE CREEK NATIONAL COUNCIL

Mr. BEAVER. Thank you, Chairman Inouye, Vice Chairman Campbell, and members of the committee. Thank you for this opportunity to share some of my thoughts with you about H.R. 2880, the "Five Nations Indian land Reform Act."

My name is R. Perry Beaver. I am a full citizen of the Muscogee [Creek] Nation. I have spent most of my life in the Muscogee Nation. I have served as the principal chief of the Muscogee Nation for the past 7 years. For many years before that, I served as a member of the National Council of the Muscogee Nation. My grandparents owned restricted land within the Muscogee Nation, my parents owned restricted land and I also own restricted entrust land within the Muscogee Nation.

During my lifetime, I have seen first hand that the Federal system for the protection of restricted Indian lands within the

Muscogee Nation has not protected these lands, and has caused great hardship on Indian landowners.

The current Federal laws affecting our restricted lands are complicated and confusing. The Five Nations Indian land Reform Act, H.R. 2880, will significantly reform existing Federal legislation governing restricted lands owned by allottees, and descendants of allottees, of the Muscogee [Creek], Cherokee, Seminole, Choctaw, and Chickasaw Nations. H.R. 2880 is the result of more than a decade of research, meetings and refining of the bill's language.

This bill before you today is the result of tedious and thoughtful work by numerous persons, and many, many revisions. We have received considerable input and technical assistance from the Department of the Interior personnel at the Muscogee Regional Office and the Tulsa Field Solicitor's Office, all of whom have extensive and unique experience with the implementation of existing Federal land laws affecting Indians in eastern Oklahoma. We have held meetings with members of the Oklahoma Bar Association Probate Committee and Real Property Section.

Based on their comments and suggestions, we made changes. We have spent long hours discussing recommendations with the BIA Central Office, and have made many more changes. During the past 3 years, we have also utilized the expertise of Congressional staff. They have played a major role in ensuring that this legislation is consistent with Federal Indian policy and is drafted in such a way as to ensure that the intent of its provisions is clearly stated.

I would like to take a few moments to talk about some of the problems that restricted landowners in eastern Oklahoma have encountered. One of the biggest problems is the historic inability of heirs of restricted landowners to have the estates probated. Most of these estates have not been probated because Indian heirs do not have money to hire private attorneys to file probates in the State court system, which is required by current law.

History has also shown that countless acres of restricted lands have been lost when state courts have authorized the sale of the restricted lands in estates in order to pay the costs and attorneys fees for probate of the estate. This often involved sale of the entire restricted estate, rather than sale of just enough property to pay the costs and attorneys fees.

Since enactment of the act of June 14, 1918, the Oklahoma State courts have had jurisdiction over actions to determine heirs of owners of individual restricted Five Tribes allotments. The act of August 4, 1947 [the 1947 act] gave State courts exclusive jurisdiction of all guardianships and probates affecting Indians of the Five Nations. This Federal use of a State system to perform Federal trust responsibilities has not occurred anywhere else in the country. It has been a failure.

H.R. 2880 will stop the filing of future heirship and probate cases involving restricted lands in Oklahoma State court. Instead, the Secretary's designee will have exclusive jurisdiction to probate wills, hear estate actions or otherwise determine heirs of deceased owners of restricted and trust property, including restricted or trust funds or securities. This bill authorizes the Secretary to designate administrative law judges or other officials to perform these probate duties. However, it will permit any probate or heirship pro-

ceedings that are pending in Oklahoma State court as of the effective date of the act being concluded in State court.

Federal administrative jurisdiction over probates and heirships involving trust and restricted property will help heirs of deceased restricted landowners to finally obtain title to their restricted lands. The case will be prepared administratively by realty personnel and then submitted to an Indian probate judge. Indian heirs will not need to hire attorneys, and there will be no filing fees. During the past year or two, the BIA has established new "attorney decision maker" positions throughout the country to probate Indian trust estates.

There is now an attorney decision maker assigned to western Oklahoma to deal with probates involving trust property. Enactment of the H.R. 2880 will result in the creation of new attorney decision maker positions in eastern Oklahoma. They will deal solely with probates of Five Nations restricted and trust estates, and by hard work by tribal and Federal personnel, with proper funding, we can finally resolve the problem of unprobated estates. The bill will reduce the number of cases filed in State and Federal court involving restricted land.

Another problem is the use of adverse possession as a way of taking restricted land. That has been a unique problem faced by restricted Indian landowners. This problem started when Congress enacted the Act of April 12, 1926, which made Oklahoma State's limitations apply to restricted land. Nowhere else in the country are state statute of limitations applied to Indian lands. In eastern Oklahoma, the Oklahoma statute of limitations is used to allow persons to acquire title to property if they meet various requirements, including open and hostile possession of the land for a period of 15 years or more.

Many acres of restricted lands have been lost through adverse possession. H.R. 2880 has been drafted to eventually place restricted lands in the same status as trust lands, which are not subject to adverse possession. It will allow adverse possession of restricted lands only if all requirements of Oklahoma law for acquiring title by adverse possession, including the running of the full 15-year limitations period, have been met before the effective date of this act. Eventually, adverse possession of restricted land will become a thing of the past.

A large amount of restricted Indian land in eastern Oklahoma has also been lost through forced partition sales, which were filed in state court, based on the Act of June 14, 1918, which made state partition laws applicable to restricted lands in eastern Oklahoma. This 1918 law is different from Federal laws and regulations applicable to partition of trust property. Under those laws, partitions of trust property are under the Secretary's jurisdiction. Under H.R. 2880, involuntary partition of trust property and voluntary partition of restricted and trust property will be removed from State court jurisdiction. These partitions will be under the Secretary's jurisdiction.

The bill will continue to allow involuntary partition of restricted property to be filed in state or Federal court for ten years from the effective date of the act. Under State law, an owner of an individual interest, no matter how small, can force the sale of the entire

acreage. Although this will not change immediately under the provisions of the proposed bill, the proposed bill will allow an Indian owner who doesn't consent to a partition sale to receive a minimum of 90 percent of the appraised value and will not allow assessment of costs against nonconsenting owners.

This will be an improvement, since at the present time, Indian owners may receive only two-thirds of the appraised value of property sold in a forced partition, and the costs of the proceedings are paid from the sales proceeds before distribution to the Indian owners.

H.R. 2880 will also establish a non-judicial procedure for Indians and non–Indians to cure certain types of title defects in restricted property or former restricted property, without requiring the owner to file a quiet title action. This will save the landowners money without putting a greater burden on the Federal Government. Under current law, there is already extensive Federal involvement. Notice of quiet title suits involving restricted property must be given to the BIA Eastern Oklahoma Regional Director. Regional Office staff and tribal realty staff must conduct a detailed review to determine whether the Federal Government should consider further involvement in the case.

Many cases are referred to the Tulsa Field Solicitor's Office. Some cases require representation by the U.S. Attorney and removal to Federal court. The bill will streamline the process and will be more efficient. The U.S. District Courts in the State of Oklahoma and Oklahoma State District Courts will still keep jurisdiction over quiet title actions, provided that they meet various requirements. H.R. 2880 also authorizes the courts of the State of Oklahoma to continue to exercise Federal instrumental authority over heirship, probate, partition, and other actions involving restricted property pending on the effective date of this act, unless the petitioner, personal representative, or State court dismisses the action.

H.R. 2880 will repeal various inconsistent Federal laws, as well as laws that it has revised. This will be helpful, because it will do away with scattered laws that are in some cases almost a century old, and will replace these laws with one centralized and organized law that will be more accessible to the people affected by this law, and to the persons who must assist in implementation of this law.

This bill before you is not perfect. It is not possible to have a perfect bill, especially when there are so many factors and issues that must be covered by this law. But I believe that this bill is ready to be enacted into law. I believe that the time is long overdue for Congressional action to remedy inequitable Federal legislative treatment that the Five Nations have received for the past century. I believe that by taking this step, Congress will enable our people to keep those last few remaining acres of restricted Indian lands within their families.

In a 20-year period between 1978 and 1998, more than 11,430 acres of restricted lands became unrestricted, and it is likely that most of these lands went out of Indian ownership altogether. The bill will not increase the Indian land base, but it will reduce the amount of land that is being lost. We cannot afford to wait any longer for this legislative reform. I ask that this Committee use all

possible speed to take appropriate action and ensure that this bill is made into law in 2002.

Again, thank you for the opportunity to appear before you today.

[Prepared statements of Mr. Beaver and Mr. Gouge appear in appendix.]

The CHAIRMAN. Thank you very much, chief. Before proceeding, I would like to recognize the distinguished Senator from Oklahoma.

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM OKLAHOMA

Senator INHOFE. Thank you, Mr. Chairman.

First of all, let me apologize for the way things are run here in Washington. It's not my fault, but we're having our big hearing, our public hearing on intel on the 9–11, and its those of us who serve on the Intelligence Committee, it's required attendance and that's taking place at the same time, so I have to go back and forth.

I have one question I was going to ask Ms. Martin and since she's not up there, I can ask this question and she can nod. There's been a lot of confusion about this and I've had a lot of inquiries, and I know all the distinguished participants at the table very well personally, but people asking questions as to how, what's going to be affected in all this. I would like to simplify it and ask Ms. Martin if it's true.

All this bill would do is put the land owned by Indians in eastern Oklahoma on the same footing as western Oklahoma and the rest of the country.

Ms. MARTIN. [Nodding.]

Senator INHOFE. And there are no other little seekers? Okay, I've had a chance to talk to a number of people about this and they keep coming up with other ideas and so I was hoping this would come through. Let me just say, Mr. Chairman, I know that I'm out of order here, but just say I'm really glad to be here to welcome our distinguished guests and would like to ask them just one question if it would be alright. Thank you Mr. Chairman.

You know, the Bureau of Indian Affairs is not known for running things as well as they should be running things, and we have all had personal conversations about this. This bill, if passed, is going to put a greater amount of responsibility on them. Do the three of you all feel comfortable with this, that it would be properly administered to your mutual benefits?

Mr. BEAVER. Yes, Senator; I think it could properly administrate it, but one thing I did note in there is that it must have proper funding.

Mr. PYLE. Senator, If I may, I think all three of these tribes and most of the other tribes, all but maybe the Seminole, actually contract with the Department of the Interior to run these sections, so we would actually need funds, but we actually operate it now.

Senator INHOFE. Thank you, Chief Pyle.

Mr. SMITH. Certainly, Senator, it would be a vast improvement over the system we have now.

Senator INHOFE. Alright, that's the main thing I wanted to ask, Mr. Chairman. Thank you for your indulgence.

The CHAIRMAN. Thank you very much for your presence.

Senator INHOFE. Yes, sir.

The CHAIRMAN. And now may I recognize the principal Chief of the Choctaw Nation of Oklahoma, Greg Pyle.

Chief Pyle.

STATEMENT OF GREG PYLE, PRINCIPAL CHIEF, CHOCTAW NATION OF OKLAHOMA, DURANT, OK

Mr. PYLE. Mr. Chairman, Senator Campbell, and members of the committee, ladies and gentlemen, my name is Gregory Pyle, I'm the chief of the Choctaw Nation of Oklahoma. We are the third largest tribe in the United States right behind our neighbors, the Cherokee. Of course, we reside in the southeast corner, one-fourth of the State of Oklahoma. I am here today to lend my support to the swift passage of H.R. 2880, a bill to right inequities which exist in the treatment of individual land allotments held by the Five Indian Tribes.

We have a situation in the lands of the so-called Five Civilized Tribes which is unique in the U.S. Government. In the 1830's, when my ancestors were removed from the South Eastern United States to the Oklahoma Indian Territory, the treaties were signed and transferred the land to the Five Tribes in fee simple. The lands were subject to a Federal alienation, but were in a different legal status than the lands reserved to Western Tribes in the treaties covered by the period 1830–75.

As a result, our lands were not subject to the distributions and ravages of the 1888 Dawes Act. We went into the era of Statehood for Oklahoma with our land base fairly intact. In this respect, we were lucky, then. However, this situation did not last.

During the period 1900–47, a series of land acts applicable only to the Five Tribes in eastern Oklahoma were passed which led to the present complex situation. To summarize, jurisdiction over probate and other actions involving individual title to allotted lands was transferred to the State District Courts of Oklahoma. Actions in these courts were subjected to costs and attorneys fees which led to thousands of acres of land being sold away from decedents to pay court costs associated with the estates.

Thousands of estates have not been probated or have been subjected to inordinate delays. Thousands of acres of land have been lost by adverse action suits, when non–Indians have encroached on Indian lands without the knowledge of Indian owners. Since most Indians die without a will, the situation has been made worse.

Frankly, protections against loss of land and with respect to estates which have been afforded every other Indian tribe in the United States are denied in eastern Oklahoma. H.R. 2880 responds to this situation with remedial action. In brief, it would repeal the tangle of estate and property laws which apply to the eastern one-half of Oklahoma, and replace them with simple statements of law similar to the rest of Indian country. It is a cornerstone, a vesting of jurisdiction away from State courts, and placement of it with the U.S. Secretary of the Interior. Its provisions are too numerous to be set forth in detail in my testimony. However, we have reviewed them, and we are in full support of the bill.

There is one cautionary note, however, which I must bring up. Under current law, records pertaining to land and descendants and tribal status are maintained by the Five Tribes, under contract

with the Department of the Interior. We receive support under our contract for this activity, though the amount received has been insufficient in the past and has to be augmented by the Choctaw Nation. Under current law, we are responsible for providing this information to Members of the Choctaw Nation and to descendants of Members or those on the original rolls of the Choctaw Nation.

Under new legislation, however, the tribes will be expected to provide information to any descendant of a member or an original enrollee, regardless of degree of Indian blood. This will be a substantial burden. This burden was recognized by the Congressional Budget Office, which, in their report published as part of the House Committee Report on the bill, found a need for substantial increases to the funds provided to tribes for those services. We hope we can rely on our friends in the Congress to see that such funds are provided in the future.

Mr. Chairman, that completes my testimony. I will be happy to answer any questions you may have on the bill.

[Prepared statement of Mr. Pyle appears in appendix.]

The CHAIRMAN. Thank you very much Chief Pyle.

If I may proceed in my questions with the principal chief of the Cherokee Nation, Chief Smith, you have heard my questions to the Deputy Assistant Secretary of the Department of the Interior. In your view, does this bill allow restricted lands of the United Keetoowah Band members to escheat to the Cherokee Nation of Oklahoma?

Mr. SMITH. Senator, in 1970, this Congress passed law that restricted what allotments would escheat to the Cherokee Nation. This bill does not change existing law, law that's been on the books for 32 years.

The CHAIRMAN. And do you agree that the members of the United Keetoowah Band are descendants of the historic Cherokee Nation?

Mr. SMITH. Sir, the question is framed a bit awkwardly. There is not an historical Cherokee Nation. There is only one Cherokee Nation. From our constitution of 1839 to the 1906 Act, to our present constitution in 1975, those issues have been laid to rest by the Federal judges in the northern District of Oklahoma. There is only one Cherokee Nation, before and after statehood, now for 180 years.

The CHAIRMAN. Would the Cherokee Nation of Oklahoma agree to include the United Keetoowah Band within the definition of Five Nations?

Mr. SMITH. We would not, sir.

The CHAIRMAN. I thank you very much and now, if I may ask Chief Beaver. You have indicated the restricted lands have been lost through court-ordered sales in order to pay for costs of probate and in addition, much restricted land has been lost through adverse possession. Do you have any estimate of how much restricted land has been lost through such processes?

Mr. BEAVER. No, Senator; but I can get it. I know it's been happening, as far as adverse possession and as far as partition for sale of land and stuff like this. Personally, my mother lost her land because of partition for sale. She was forced to sell her land because we couldn't afford to buy the other person out. And as far as, per-

sonally, I've owned trust land, I've owned restricted land also, and it's a big problem. We were forced to have ours probated ourselves, because we could afford an attorney.

But those who could not afford an attorney, their land was sold. And then, from that sale of land, had to pay the attorneys. And so that's where some of their land was lost. As of right now, in 1906, when the land allotment, we got some original allottees, they have to be 96 years old, and we have about 20 original allottees, and you see that's three generations, and we as an original allotted land have never been probated. And so you can see the complexity that we have right now, that if we went to State court, what would it take? So, I don't know exactly what land has been lost, I know that it happened. I can get that information to you.

The CHAIRMAN. I would appreciate that. Can you get it to us rather soon, because we would like to report the to the full Senate.

Mr. BEAVER. Yes, sir.

The CHAIRMAN. Then may I say that the record of the proceedings will be kept open for 1 week in order to receive additional information and testimony. Chief, how many estates need to be probated in your nation?

Mr. BEAVER. Senator, I wouldn't know, but there's such a backlog, that I would dare to guess. I could ask our Attorney General, she handles most of them. We probate now because we contracted from them to do that. But we can only do three or four a month at most, we're way behind. In fact, we stopped taking action on probates any more because our backlog is so far behind. The complexity of it is so much that it's going to take a full-time attorney such a long time.

The way it is now, I have restricted land and trust land in three different counties in Oklahoma. My will has to be sent to each county by an attorney. When it's probated with a will, that's the complexity we have right now. We have to go to each county courthouse in each district and file our will. This would solve all of that.

The CHAIRMAN. If the defective transactions that you spoke of are cured, will this result in the return of restricted lands to the tribes?

Mr. BEAVER. I'm going to have to defer that to Chief Smith.

Mr. SMITH. It would not increase the land base of restricted lands. It protects the remnants that we have now. It does not expand the land base.

The CHAIRMAN. Thank you very much. If I may ask a few questions of the chief of the Choctaw Nation. Is there anything that would preclude the possibility of amending the contracts with the Department to provide additional funds to take the increased burden into account?

Mr. PYLE. I think this could be brought up because we've never been allowed to have these probates. I think what would happen then is that the Secretary, the Assistant Secretary would have to make available the at least a small portion of more money. We have used, in the past, tribal resources. We are not a class III gaming tribe, we do not have legalized gaming pass bingo in our areas, but what we've had we supplemented with tribal funds ourselves.

In response to your question earlier, it was estimated how many probates were out there, somewhere about 5,000 in an estimate about 5 years ago. It will take a long time.

The CHAIRMAN. I understand that the new laws applying to the lands in northeastern Oklahoma will be similar to the rest of Indian country, but how will the new laws be different? Would they be any different?

Mr. PYLE. My understanding [is] we would be treated like other tribes.

The CHAIRMAN. As Senator Inhofe indicated.

Mr. PYLE. Yes, sir.

The CHAIRMAN. Mr. Vice Chairman.

Senator CAMPBELL. Thank you Mr. Chairman. Between the questions you asked and the very complete testimony of Chiefs Beaver, Smith, and Pyle, I don't have a lot of questions. I've always been somewhat fascinated, though, by the history of the Five Civilized Tribes as opposed to the rest of us who, I assume come from uncivilized tribes. I know they've been treated differently in history. I've never understood a little bit of it. Maybe you can clear up a couple of questions for me.

I understand from many Cherokee friends that there are two types of enrollment, one called a red-card enrollment, one a blue-card enrollment. Is that familiar to you, Chief? One with benefits, one without benefits? This is what I've heard from people in California who all tell me they are Cherokees. You've got a lot of them out there.

Mr. SMITH. The Cherokee rolls go back to the Dawes Commission roll in the early 1900's. The Cherokee Nation prior enrollment requires a certificate degree of Indian blood and we issue a citizenship card which is usually blue. The United Keetoowah Band, which originated in 1950, has a membership card also. Much of their membership goes back to the Dawes Commission enrollment, their card, I believe, at one time was red.

There are a lot of groups out there who profess to be Cherokee Nations and they're not citizens of the Cherokee Nation, you cannot trace back to the Dawes Commission roll.

Senator CAMPBELL. The effects of this bill will, in effect, will be for the people who can trace ancestry through what are called red card holders.

Mr. SMITH. Through the Dawes Commission rolls.

Senator CAMPBELL. The Dawes Commission rolls. Is that based on blood quantum or lineal descendency?

Mr. SMITH. The Dawes Commission rolls were closed in 1905. You had to be a resident in the Five Tribes and you had to have some showing of blood quantum. You did not have to have a minimum. So that's the base roll for the Five Tribes.

Senator CAMPBELL. Now they just have to, when a person's enrolled, they just have to show lineal descendency to somebody that was on the Dawes Roll, the original Dawes Roll, is that correct?

Mr. SMITH. That's correct. Senator Campbell. Unlike other tribes where you have to, in some cases, have one-fourth provable or something of that nature, is that correct?

Mr. SMITH. Each of the Five Tribes is a little different scenario. With the Cherokee Nation, we don't have a minimum blood quan-

tum. We follow the theory that it's a right of citizenship, it's a political right rather than a racial right.

Senator CAMPBELL. So this bill—maybe I'm way off on this thing, I'm just totally out in left field here. How would this affect people, for instance, who are members of the tribe but haven't been there for 100 years. Through lineal descendency, they've been put on the roll but they're out in California, they couldn't recognize an Indian if they stumbled into one.

Mr. SMITH. This bill has a very limited application. It really applies to those Indians who by definition have restricted lands now and they have to be one-half degree or more. Those who are less than one-half degree would not be directly affected by this bill until heirship become an issue. It's one-half or more.

Senator CAMPBELL. Chiefs Pyle and Beaver, are your rules established pretty much the same way as the Cherokee?

Mr. BEAVER. Yes, Senator; this bill only affects those landowners that have restricted or trust property.

Senator CAMPBELL. I see.

Mr. PYLE. It would be the same with the Choctaw.

Senator CAMPBELL. Same with the Choctaw. Okay.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The CHAIRMAN. Our next panel consists of the chief of the Delaware Tribe of Indians of Oklahoma, Dee Ketchum, and the chief of the United Keetoowah Band of Oklahoma, Dallas Proctor, who will be accompanied by the council member of the United Keetoowah Band, Charles Deason.

STATEMENT OF DEE KETCHUM, CHIEF, DELAWARE TRIBE OF INDIANS, BARTLESVILLE, OK

Mr. KETCHUM. Good morning. I want to thank the committee for taking the time to seriously consider this very important bill. My name is Dee Ketchum, I am the chief of the Delaware Tribe of Indians located in Bartlesville, OK.

To give you a little background concerning the Delaware Tribe, it was the first treaty tribe to have a government-to-government relationship with the U.S. Government, in 1778. Since then, we have maintained our government-to-government relationship with the U.S. Government.

In about 1867, the tribe was removed to the lands within the former Cherokee boundaries in Oklahoma. At that time, we had to purchase all the rights of native Cherokees and purchase approximately 157,000 acres from the Cherokee Nation at a price of $1 per acre to preserve our tribe. We have continuously resided within northeastern Oklahoma since 1867. Most of the Delawares took their allotments the same as Cherokees during that period of time. But 198 took their allotments as Delawares. These 198 allotments are known as "D-alottments."

Since the reorganization of the Cherokee Nation in 1975, our relationship with the Cherokee Nation has not been good at best. The Cherokees resent our presence in their old reservation and would like dearly to see us evicted. We believe that various provisions of this bill, drafted by Cherokee attorneys, are intended to further the Cherokee's goal of doing away with the Delaware Tribe.

While we support the goal of H.R. 2880 to do away with the blood quantum requirements for inherent allotments, we have been concerned with some of the unnecessary language in the bill, and some of the drafts of this Five Nations Act. While Senator Inhofe and his staff have helped us to modify some of the objectionable language, we still have four concerns remaining with this particular bill.

First, we would request that the committee amend the language to clarify that Congress is not intending to recognize existing reservation boundaries of the Cherokee Nation. We have requested, instead, that the committee refer to this area and the "former" boundaries of the Five Nations.

Second, H.R. 2880 has created a new term, "Individual Indian." With this new capitalization, this implies there is some kind of new term of art. The definition of Indian in this act is clearly limited to this act and we see no reason to create a new category. We would therefore request that the committee drop the capitalized "I" in "Individual Indian" throughout this bill for the same reason we would ask the committee drop the word "individual" from "Individual Indian" in the definition section.

Third, section 204 (a)(3) is a section dealing with trust lands. It provides that if an Indian tribe in eastern Oklahoma owns part of a trust land, the Assistant Secretary cannot force a partition, but the provision applies to only one of the Five Nations. In this bill, intent to apply to restricted allotments moves into the area of trust lands that limits reference to the five larger tribes.

To me, this shows an intent from Congress not to recognize the rights of the Delaware Tribe to have land put in trust. There is no reason why the Five Nations' right to retain interest in land trust should be favored over the other six federally-recognized tribes in eastern Oklahoma.

We are requesting that this provision be amended to include the language of "or other Indian tribes."

Fourth, section 408 is supposed to clarify that nothing in the act is intended to affect the existing laws for taking land in trust. But it only applies to individual Indians and does not effect the same protection to other tribes residing in northeastern Oklahoma. Again, to me, this means that Congress is not interested in treating the Delaware on equal terms and grounds with other tribes. We have also requested that this provision be amended to include a reference to "other Indian tribes."

In conclusion, I would like to ask, on behalf of the Delaware Tribe, amend these problematic provisions before moving this bill forward. I thank you for your time. Again, we do feel like this is a good bill with good intent, but there are some problematic provisions in there we have concerns with, personally. Thank you.

[Prepared statement of Mr. Ketchum appears in appendix.]

The CHAIRMAN. Thank you very much, Chief.

And may I now recognize Chief Proctor of the United Keetoowah Band.

STATEMENT OF DALLAS PROCTOR, CHIEF, UNITED KEETOOWAH BAND, TAHLEQUAH, OK, ACCOMPANIED BY CHARLES DEASON, COUNCIL MEMBER

Mr. PROCTOR. Thank you, Mr. Chairman, I would like to thank you guys in the language first. Good morning, my name is Dallas Proctor, and I am the chief of the United Keetoowah Band, the Cherokee Indians in Oklahoma. With me this morning is Charles Deason. He's a council member and the Tribal Legislative Liaison.

Thank you on behalf of the United Keetoowah Band [UKB] for the opportunity to testify regarding H.R. 2880, the Five Nations Indian Land Reform Act. Your committee has a proud history of protecting and furthering tribal sovereignty. Because of this, we are hopeful that you will amend H.R. 2880 to reflect the fact that the United Keetoowah Band of Cherokee Indians is a separate government from the Cherokee Nation of Oklahoma [CNO] and one with equal sovereignty and equal claim to inheritance of authority and rights of the historic Cherokee Nation.

There is a complex problem with this bill because of the interwoven nature of the two tribes and their tribal members regarding their restricted lands, but there is a simple fix. The harms that this bill intends to correct were visited upon the historic Cherokee Nation.

That historic Cherokee Nation has been succeeded by two federally recognized tribes both having descendants from the 1906 Dawes Rolls and both having descendants who own restricted property. Ninety eight percent of the UKB members still live within the boundaries of the historic Cherokee Reservation. All of the UKB and CNO members in Oklahoma are affected, and both tribes should be named in the bill as successor to the historic Cherokee Nation.

We ask this committee to amend the definition of the Five Nations in section 4(1) of the bill to provide that the term "Five Nations" means "the Cherokee Nation through its successors, the United Keetoowah Band of Cherokee in Oklahoma and the Cherokee Nation of Oklahoma." If the term "Cherokee Nation" were defined as its present successors, CNO and UKB, much of the bill would be repaired. We ask that you do so to ensure that these reforms apply with equal fairness to all descendants of the historic Cherokee Nation.

If enacted without this change, our tribal members face the prospect of having many aspects of their lives related to lands, property, and inheritance determined by a tribal government that is not their own. It would impede the sovereignty right of UKB to protect our members and exercise jurisdiction over our lands.

UKB is a federally-recognized tribe. We ask this committee to respect the fact that the Federal Government, at the direction of Congress, already recognizes the UKB as sovereign and independent of the present-day Cherokee Nation of Oklahoma. While our people are closely related and we were at one point part of the historic Cherokee Nation, we now have separate, federally recognized governments. Just as there are a number of Sioux tribal governments in South Dakota, there is more than one Cherokee tribal government in Oklahoma.

As evidence of UKB status, we note:

No. 1, the United States Congress, through the act of 1946, legislatively authorized the United Keetoowah Band of Cherokee Indians in Oklahoma to organize as a separate tribal entity under the Oklahoma Indian Welfare Act;

No. 2, the Secretary of the Interior approved the Constitution of the United Keetoowah Band of Cherokee Indians in Oklahoma in 1950;

No. 3, UKB was listed by the Department of the Interior most recently in the July 12, 2002 Federal Register as a federally recognized tribe; and

No. 4, UKB contracts under the Indian Self-Determination Act with the BIA to administer funds for services to its members.

There are two successor governments to the 1906 Cherokee Nation rolls. The UKB ancestors were part of the historic Cherokee Nation at the time of the act of April 26, 1906, that dismantled the Cherokee government, allotted portions of the Cherokee lands and caused the creation of the final roll of the Cherokee Nation. H.R. 2880 addresses problems that flow from that and subsequent legislation affecting the land rights of lineal descendants of the Five Nations, including the historic Cherokee Nation.

While only five such governmental entities existed in 1906, that is no longer true. Because UKB members are lineal descendants of the 1906 Cherokee rolls, H.R. 2880 covers them and their property. However, no role has been provided for that tribal government. We have attached more detailed information regarding the history of the United Keetoowah Band of Cherokee Indians of Oklahoma.

We support the goal of H.R. 2880. Reform is certainly needed. Amending the bill to give UKB its rightful treatment as a tribal government would not undermine the intent of the bill, but would allow UKB to serve its members. We have attached several specific recommendations for proposed changes.

The United Keetoowah Band of Cherokee Indians in Oklahoma thanks you for your hard work on this important bill to end the disparities of Indian land tenure in Oklahoma. Our comments are intended to avoid the creation of new and unintended disparities. We ask again that you amend the bill to respect the sovereign status of the UKB. Thank you.

[Prepared statement of Mr. Proctor appears in appendix.]

The CHAIRMAN. I thank you very much, Chief. Both of your nations are federally-recognized tribes?

Mr. PROCTOR. Yes, sir.

The CHAIRMAN. And both of you have testified that there are certain provisions that you want amended in this measure.

Mr. PROCTOR. Yes, sir.

The CHAIRMAN. Would you be in favor of having this bill passed by the Senate as it is, unamended, with the assurance that there will be another bill that will be considered for further amendments to this bill? I ask this question because if we were to go through the process of amending this measure at this stage in the U.S. Senate, it will have to go to conference with the House, and the time being what it is with activities in Iraq, the 13 appropriations measures, I cannot assure that this measure would be considered expeditiously. The only way we can consider this expeditiously is to pass the measure as it is so that it will go directly to the President

or hold it up and possibly consider the bill next year with the amendments. I can in no way assure you how the conference would turn out and so what are your thoughts on that?

Mr. KETCHUM. Mr. Chairman, I can't speak for United Keetoowah, I understand what you're proposing, from the Delaware perspective, I understand the seriousness of timeline here. It would be difficult for me to state that I would agree with that procedure without seeing what those amendments would be and could be assured that they would be employed.

The CHAIRMAN. Chief Proctor.

Mr. PROCTOR. I would defer that to Mr. Deason for comment, sir.

Mr. DEASON. Mr. Chairman, thank you for the opportunity to speak before you. At this time, I believe we would have to object to that without, as Mr. Ketchum said, seeing the amendments and not knowing the assurances that we would have should it go through as it is currently written. Those are some things that we as tribal leaders would have to get the input from our constituents who we represent, and this is what we're standing for today.

The CHAIRMAN. May I ask another question of those of the chiefs? Have you attempted to discuss or negotiate this matter with the principal chief and his council of the Cherokee Nation?

Mr. KETCHUM. We have been in negotiation with the Cherokee chief on a number of projects for a number of years and it has been fruitless in some of our discussions, Mr. Chairman.

Mr. PROCTOR. We have not had any negatives with Chief Smith. What I understand is that he just does not want to talk to us. And that's the best answer I can give you today, sir.

The CHAIRMAN. From what I gather, the relationship that the Delawares and the Keetoowahs have with the Cherokee Nation can be described as being good, is that correct?

Mr. PROCTOR. Yes, sir.

The CHAIRMAN. And friendly?

Mr. KETCHUM. Pretty much, so.

The CHAIRMAN. And they have not done anything that would anger you?

Mr. KETCHUM. Are you making reference to the association of the Delaware Tribe with the Cherokee Nation? Of what that kind of relationship has been? Not good. With us and the Delawares and the Cherokee Nation.

The CHAIRMAN. Are both of you opposed to having this measure be considered as it is and sent to the President with the assurance that amendments would be considered at a later date? I cannot assure you as to what the amendments would look like, because there is a House of Representatives. I cannot speak for them.

Mr. KETCHUM. I probably would stay with what I previously, Mr. Chairman, have stated. It would be very difficult for me to state that I would approve that without seeing what those amendments and corrections would be.

The CHAIRMAN. And I presume that is the position of Chief Proctor?

Mr. PROCTOR. Yes, sir; it is.

The CHAIRMAN. Well, that is why we have committees. We will do our best to resolve this matter and I thank both chiefs and Mr. Deason. Our final witness is the attorney at law from Ada, OK,

Bob Bennett. Is Mr. Bennett here? If not, the record of this committee proceeding will be kept open for 1 week and with the assurance that if any witnesses have any addendums or corrections, any further testimony you want to submit, please do so, but do so within 1 week.

With that, I thank all of you for your participation. It has been very helpful.

Thank you very much.

[Whereupon, at 11:13 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF GREGORY PYLE, CHIEF, CHOCTAW NATION OF OKLAHOMA

Mr. Chairman, Senator Campbell, members of the committee, ladies and gentlemen:

My name is Gregory Pyle, and I am the chief of the Choctaw Nation of Oklahoma. We are the third largest Indian Nation in the United States right after our neighbors who are also here today, the Cherokee, and we reside in the South Eastern one-quarter of the State of Oklahoma. I am here today to lend my support to the swift passage of H.R. 2880, a bill to right inequities which exist in the treatment of individual land allotments held by Indians in the lands of the Choctaw, Cherokees, Creeks., Chickasaws, and Seminoles.

We have a situation in the Lands of the so-called Five Civilized Tribes which is unique in the area of U.S. Indian Affairs. In the 1830"s, when my ancestors were "removed"' from the South Eastern United States to the Oklahoma Indian Territory beyond the Mississippi, the treaties we signed transferred the land to the Five Tribes in fee simple. The lands were subject to a Federal restraint of alienation, but they were in a different legal status than the lands reserved to other Western Tribes in the treaties covered by the period 1830–1875. As a result, our lands were not subject to the distributions and ravages of the 1888 Dawes Act, and we went into the era of Statehood for Oklahoma with our land base fairly intact. In this respect, we were lucky.

However, this situation did not last. During the period 1900–1947, a series of Land Acts applicable only to the Five Tribes in Eastern Oklahoma were passed which led to the present complex situation.

To Summarize: Jurisdiction over probate and other actions involving individual title to allotted lands was transferred to the State District Courts of Oklahoma. Actions in these courts were subjected to costs and attorneys fees which led to thousands of acres of land being sold away from decedents to pay court costs associated with the estates. Thousands of estates have not been probated or have been subjected to inordinate delays. Thousands of acres of land have been lost by adverse action suits, when non-Indians have encroached on Indian lands without the knowledge of Indian owners. Since most Indian decedents die without a will, the situation has been made worse.

Frankly, protections against loss of land and with respect to estates which have been afforded every other Indian tribe in the Country are denied in Eastern Oklahoma. H.R. 2880 responds to this situation with remedial action. In brief, it would repeal the tangle of estate and property laws which apply to the Eastern one-half of Oklahoma, and replace them with simple statements of law similar to the rest of Indian country. Its cornerstone is a vesting of jurisdiction away from State Courts, and placement of it with the United States Secretary of the Interior. Its provisions are too numerous to be set forth in detail in my testimony. However, we have reviewed them, and we are in full support of the bill.

There is one cautionary note, however, which I must bring up. Under current law, records pertaining to land and descent and tribal status are maintained by the Five

Tribes, under contract with the Department of the Interior. We receive support under our contract for this activity, though the amount received has been insufficient in the past and has had to be augmented by the Choctaw Nation. Under current law, we are responsible for providing this information to Members of the Choctaw Nation and to descendants of Members or those on the original rolls of the Choctaw Nation if they have one-half degree of Indian blood. In fact, we have been supplying support to those of one-fourth degree descent for years. Under the new legislation, however, the tribe will be expected to provide information to any descendant of a Member or of an original enrollee, regardless of degree of Indian blood. This will be a substantial burden. This burden was recognized by the Congressional Budget Office, which, in their report published as part of the House Committee Report on the bill, found a need for substantial increases to the funds provided to tribes for these services. We hope we can rely on our friends in the Congress to see that such funds are provided in the future.

Mr. Chairman, that completes my testimony. I will be happy to answer any questions you may have on the bill.

Testimony of Chickasaw Nation Governor Bill Anoatubby
On H.R. 2880
Before the United States Senate Committee on Indian Affairs
September 18, 2002

Mr. Chairman and members of the Committee:

I am Bill Anoatubby, governor of the Chickasaw Nation. It is a pleasure for me to provide testimony to this committee and your inviting me to do so is appreciated. Thank you.

This committee is presented with the opportunity to continue the process of righting an injustice on behalf of the United States that has endured for almost a century. The citizens of the five nations, known collectively as the Five Civilized Tribes, have endured an injustice which continues to compound itself and to compound already convoluted problems for those citizens.

The five tribes, the Cherokee Nation of Oklahoma, the Choctaw Nation of Oklahoma, the Chickasaw Nation, the Seminole Nation of Oklahoma and the Muscogee (Creek) Nation, have been set apart from the other 540+ tribes in the United States in the treatment of individual allotted lands. That treatment has created unnecessary legal and bureaucratic obstacles which impede the best use of restricted property belonging to individual citizens of those five tribes. The end result is a great injustice to each of those citizens and numerous families.

H.R. 2880 eliminates the existing problems by making it possible for citizens of the Five Civilized Tribes to be treated in the same manner as citizens of other tribes.

Until this measure becomes law, state courts in Oklahoma have jurisdiction over individual trust and restricted lands of the five tribes' citizens for purposes of probate, heirship determination and other proceedings affecting title to restricted property. Once this measure is enacted, the secretary of the U.S. Department of the Interior will have jurisdiction over such actions, except for express jurisdiction specified in H.R. 2880. Oklahoma and its courts have no special affinity or trust obligation to any citizens of the five tribes; therefore, the interests of the Individual Indian citizens have not always been the most important aspect of probate proceedings, heirship determination and other proceedings affecting restricted properties. H.R. 2880 corrects that problem and goes further by placing jurisdiction over pending estate actions with the secretary. This action alone will save years of anguish and costs to heirs and their families.

Another important aspect of H.R. 2880 is the authorizing authority for the secretary to promulgate regulations necessary to carrying out the Act. This procedure will allow the tribal governments themselves, representing their individual citizens, to have direct input into those regulations and their application, affording yet another mechanism to allow for protection of those assets of individual citizens.

All in all, this measure will greatly help those who need help the most. Under current authorities, state courts' exercise of jurisdiction causes many years of delay. The current court backlog of probate cases involving restricted lands of five tribes citizens is years and years, and generally does not take into consideration the trust obligations of the federal government in such matters.

H.R. 2880 is needed. Your consideration will be very much appreciated.

Thank you very much for allowing me to present these comments for your consideration.

TESTIMONY OF R. PERRY BEAVER,
PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION,
IN SUPPORT OF H.R. 2880, the "FIVE NATIONS INDIAN LAND REFORM ACT,"
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 18, 2002

Chairman Inouye, Vice-chairman Campbell, and Members of the Committee:

Thank you for this opportunity to share some of my thoughts with you about H.R. 2880, the "Five Nations Indian Land Reform Act." My name is R. Perry Beaver. I am a fullblood member of the Muscogee (Creek) Nation. I have spent most of my life in the Muscogee Nation. I have served as the Principal Chief of the Muscogee Nation for the past seven years. For many years before that, I served as a member of the National Council of the Muscogee Nation. My grandparents owned restricted land within the Muscogee Nation, my parents owned restricted land and I also own restricted land. During my lifetime, I have seen first hand that the federal system for the protection of restricted Indian lands within the Muscogee Nation has *not* protected these lands, and has caused great hardship on Indian landowners.

The current federal laws affecting our restricted lands are complicated and confusing. The Five Nations Indian Land Reform Act, H.R. 2880, will significantly reform existing federal legislation governing restricted lands owned by allottees, and descendants of allottees, of the Muscogee (Creek), Cherokee, Seminole, Choctaw and Chickasaw Nations. H.R. 2880 is the result of more than a decade of research, meetings and refining of the bill's language. The original version of this legislation was drafted by a workgroup of tribal officials, realty employees, tribal attorneys, and representatives of the Department of the Interior over a three year period, starting around 1991. It was finally approved by the Five Civilized Inter-tribal Council and forwarded to the Department of Interior in 1995. There was a period during which little, if any activity occurred on the bill. In 1998, the Five Nations again focused on the bill's development and momentum began to build toward the successful completion of this task.

The bill before you today is the result of tedious and thoughtful work by numerous persons, and many, many revisions. We have received considerable input and technical assistance from the Department of the Interior personnel at the Muskogee Regional Office and the Tulsa Field Solicitor's Office, all of whom have extensive and unique experience with the implementation of existing federal land laws affecting Indians in eastern Oklahoma. We have held meetings with members of the

Oklahoma Bar Association Probate Committee and Real Property Section. Based on their comments and suggestions, we made changes. We have spent long hours discussing recommendations with the BIA Central Office, and have made more changes. During the past three years, we have also utilized the expertise of Congressional staff. They have played a major role in ensuring that this legislation is consistent with federal Indian policy and is drafted in such a way as to ensure that the intent of its provisions is clearly stated.

I would like to take a few moments to talk about some of the problems that restricted landowners in eastern Oklahoma have encountered. One of the biggest problems is the historic inability of heirs of restricted landowners to have the estates probated. There are now a huge number of unprobated estates involving restricted property. Most of these estates have not been probated because Indian heirs do not have money to hire private attorneys to file probates in the state court system, which is required by current law. History has also shown that countless acres of restricted lands have been lost when state courts have authorized the sale of the restricted lands in estates in order to pay the costs and attorneys fees for probate of the estate. This often involved sale of the entire restricted estate, rather than sale of just enough property to pay the costs and attorneys fees.

Since enactment of the Act of June 14, 1918, the Oklahoma state courts have had jurisdiction over actions to determine heirs of owners of individual restricted Five Tribes allotments. The Act of August 4, 1947 (the 1947 Act) gave state courts exclusive jurisdiction of all guardianships and probates affecting Indians of the Five Nations. This federal use of a state system to perform federal trust responsibilities has not occurred anywhere else in the country. It has been a failure.

H.R. 2880 will stop the filing of future heirship and probate cases involving restricted lands in Oklahoma state court. Instead, the Secretary's designee will have exclusive jurisdiction to probate wills, hear estate actions or otherwise determine heirs of deceased owners of restricted and trust property, including restricted or trust funds or securities. The bill authorizes the Secretary to designate administrative law judges or other officials to perform these probate duties. However, it will permit any probate or heirship proceedings that are pending in Oklahoma state district court as of the effective date of the act to be concluded in state court.

Federal administrative jurisdiction over probates and heirships involving trust and restricted property will help heirs of deceased restricted Indian landowners to finally

obtain title to their restricted lands. There will no longer be a need for the heirs to hire private attorneys to probate restricted estates. The case will be prepared administratively by realty personnel and then submitted to an Indian probate judge. Indian heirs will not need to hire attorneys, and there will be no filing fees. During the past year or two, the BIA has established new "attorney decision maker" positions throughout the country to probate Indian trust estates. There is now an "attorney decision maker" assigned to western Oklahoma to deal with probates involving trust property. Enactment of the H.R. 2880 will result in the creation of new "attorney decision maker" positions in eastern Oklahoma. They will deal solely with probates of Five Nations restricted and trust estates, and by hard work by tribal and federal personnel, and with proper funding, we can finally resolve the problem of unprobated estates.

H.R. 2880's provisions for probates of restricted estates will implement current laws concerning probates of trust estates of deceased Indians in western Oklahoma and other parts of the country. If a deceased Indian owned trust property, the trust estate will be administered and distributed by an attorney decision maker or an administrative law judge. If the decedent Indian owned non-trust property, the non-trust estate will be administered and distributed within the Oklahoma state court system. The bill will also allow non-Indian record owners of property purchased or leased from undetermined heirs to request an administrative law judge or attorney decision maker to determine the heirs of the decedent, so that they can establish marketable title and protect lease interests.

The bill will reduce the number of cases filed in state and federal court involving restricted land. The general practice has been to file suits in Oklahoma state courts involving restricted property, in order to cure title defects, to acquire property by adverse possession and to determine heirs of decedent Indians. These actions are subject to removal to federal court under the Act of April 12, 1926.

The use of adverse possession as a way of taking restricted Indian land has been a unique problem faced by restricted Indian landowners. This problem started when Congress enacted the Act of April 12, 1926, which made the Oklahoma statute of limitations apply to restricted land. Nowhere else in the country are state statute of limitations applied to Indian lands. In eastern Oklahoma, the Oklahoma statute of limitations is used to allow persons to acquire title to property if they meet various requirements, including open and hostile possession of the land for a period of fifteen

years or more. Many acres of restricted lands have been lost through adverse possession. H.R. 2880 has been drafted to eventually place restricted lands in the same status as trust lands which are not subject to adverse possession. It will allow adverse possession of restricted lands only if all requirements of Oklahoma law for acquiring title by adverse possession, including the running of the full 15-year limitations period, have been met before the effective date of the act. Eventually, adverse possession of restricted lands will become a thing of the past.

A large amount of restricted Indian land in eastern Oklahoma has also been lost through forced partition sales which were filed in state court, based on the Act of June 14, 1918, which made state partition laws applicable to restricted lands in eastern Oklahoma. This 1918 law is different from federal laws and regulations applicable to partition of trust property. Under those laws, partitions of trust property are under the Secretary's jurisdiction. Under H.R. 2880, involuntary partition of trust property and voluntary partition of restricted and trust property will be removed from state court jurisdiction. Those partitions will be under the Secretary's jurisdiction.

The bill will continue to allow involuntary partition of restricted property to be filed in state or federal court for ten years from the effective date of the act. Under state law, an owner of an undivided interest, no matter how small, can force the sale of the entire acreage. Although this will not change immediately under the provisions of the proposed bill, the proposed bill *will* allow an Indian owner who doesn't consent to a partition sale to receive a minimum of 90% of the appraised value and will not allow assessment of costs against nonconsenting owners. This will be an improvement, since at the present time, Indian owners may receive only two-thirds of the appraised value of property sold in a forced partition, and the costs of the proceedings are paid from the sales proceeds before distribution to the Indian owners.

H.R. 2880 will also establish a non-judicial procedure for Indians and non-Indians to cure certain types of title defects in restricted property or former restricted property, without requiring the owner to file a quiet title action. This will save the landowners money, without putting a greater burden on the federal government. Under current law, there is already extensive federal involvement. Notice of quiet title suits involving restricted property must be given to the BIA Eastern Oklahoma Regional Director. Regional Office staff and tribal realty staff must conduct a detailed review, to determine whether the federal government should consider further involvement in the case. Many cases are referred to the Tulsa Field Solicitor's Office. Some cases require

representation by the United States Attorney and removal to federal court. The bill will streamline the process and will be more efficient.

Types of title defects related to restricted property or former restricted property which may be cured using this non-judicial procedure involve situations where it would be difficult, if not impossible, to invalidate a transaction and return title to the original Indian owner or his or her heirs, due to statute of limitations problems. The types of defects which may be cured through this procedure involve transactions that occurred more than 30 years before the effective date of the act without full compliance with federal laws, such as failure to follow federal notice requirements, situations where the state court approved a sale or issued a probate order when a federal official actually had that authority, or cases where a federal official approved a sale when the state court had that authority.

The United States district courts in the State of Oklahoma and Oklahoma state district courts will still keep jurisdiction over quiet title actions, provided that they meet various requirements. H.R. 2880 also authorizes the courts of the State of Oklahoma to continue to exercise Federal instrumentality authority over heirship, probate, partition, and other actions involving restricted property pending on the effective date of the act, unless the petitioner, personal representative, or State court dismisses the action.

H.R. 2880 will repeal various inconsistent federal laws, as well as laws that it has revised. This will be helpful, because it will do away with scattered laws that are in some cases almost a century old, and will replace these laws with one centralized and organized law that will be more accessible to the people affected by the law, and to the persons who must assist in implementation of the law.

The bill before you is not perfect. It is not possible to have a perfect bill, especially when there are so many factors and issues that must be covered by this law. But I believe that this bill is ready to be enacted into law. I believe that the time is long overdue for Congressional action to remedy the inequitable federal legislative treatment that the Five Nations have received for the past century. I believe that by taking this step, Congress will enable our people to keep those last few remaining acres of restricted Indian lands within their families. In a twenty year period between 1978 and 1998, more than 11,482 acres of restricted lands became unrestricted, and it is likely that most of these lands went out of Indian ownership altogether. The bill will not increase the Indian land base, but it will reduce the amount of land that is being lost. We cannot afford to wait any longer for this legislative reform. I ask that this Committee use all possible speed to take appropriate action to ensure that this bill is enacted into law in 2002. Again, thank you for this opportunity to appear before you today.

TESTIMONY OF WILBUR GOUGE,
NATIONAL COUNCIL SPEAKER, MUSCOGEE (CREEK) NATION,
IN SUPPORT OF H.R. 2880, the "FIVE NATIONS INDIAN LAND REFORM ACT,"
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 18, 2002

Chairman Inouye, Vice-chairman Campbell, and Members of the Committee:

I am offering my testimony in support of H.R. 2880 because I believe that there is a great need to improve the existing federal laws concerning restricted lands of the Muscogee (Creek) Nation, Seminole Nation, Cherokee Nation, Choctaw Nation and Chickasaw Nation. I might begin by saying that although these Indian nations have historically been collectively referred to as the "Five Civilized Tribes", we are proposing to make a break away from that term, and have asked that H.R. 2880 be named the "Five Nations Indian Land Reform Act." I will accordingly use that terminology in the brief historical overview that I am presenting in this testimony.

The Five Nations historically occupied a portion of the southeastern United States. In the 1830s members of the Five Nations were forcibly removed by the United States on the "Trail of Tears" to Indian Territory--now the State of Oklahoma. Under treaties with the United States, each of the Five Nations received large tracts of land in Indian Territory. By treaty, they held title to these tracts in fee. This gave them much greater power and control over their lands than other tribes across the United States, which received only beneficial ownership with title held in trust by the United States. In 1866, after the Civil War, the Five Nations were forced to enter into new treaties with the United States. Their domains were made much smaller by these treaties, occupying what is now eastern Oklahoma.

In 1887 the General Allotment Act was enacted. That law resulted in the allotment of Indian lands across the country. The federal government was able to issue the allotment patents, because the United States held title to those lands in trust for the various tribes nationwide. But the United States had no legal authority to issue allotment patents for the fee lands owned by the Five Nations. The Five Nations were successful in resisting allotment at that time, and they were expressly excluded from the provisions of the General Allotment Act.

In 1890, Congress enacted the Oklahoma Organic Act, which split the original Indian Territory by establishing a boundary line between a new Oklahoma Territory in what is now western Oklahoma, and a new Indian Territory in what is now eastern Oklahoma. The Indian lands in the new Oklahoma Territory had been allotted or were

in the process of being allotted under the General Allotment Act. The fee lands owned by the Five Nations in Indian Territory were still unallotted, although there was a great clamor for allotment from non-Indians who had settled on some of those lands without permission, or who wished to settle on those lands. A territorial government was established in Oklahoma Territory but not in Indian Territory. The Five Nations, maintained their own governments within their respective areas within the Indian Territory. The Five Nations sought to obtain Congressional approval of an Indian state, to be governed by the Five Nations, as had been contemplated in the 1866 treaties, but were not successful in doing so.

Beginning in 1889, Congress enacted a series of laws to force the allotment of the lands of the Five Nations. These laws had no effect on the lands of the northeast eight tribes, whose separate trust lands were allotted under the General Allotment Act, or the Osage Nation, which was subject to its own set of unique and complex federal laws, due largely to their mineral riches. The laws that Congress enacted between 1889 and 1898 threatened the very existence of the Five Nations.

Eventually, before statehood in 1906, each of the Five Nations entered into allotment agreements, addressing various issues arising in the allotment of their tribal lands. Since these lands belonged to each of the Five Nations, it was necessary for every allotment deed to be signed by the chief of the Nation whose land was being allotted. If a chief resisted or refused to sign the deeds, a new chief was appointed by the President to sign the deeds, under authority of the Act of April 25, 1906, so that the transaction would at least appear to be legal. The Muscogee (Creek) Nation allotments were, and continue to be, governed by the same federal laws affecting all allotments of the other four of the Five Nations.

The Five Nations allotment deeds conveyed the allotted land to individual Indians, subject to federal "restrictions" against alienation. These restrictions were originally defined in the allotment agreements, as well as the Act of April 26, 1906. At first, the restrictions included requirements that the Secretary of Interior had authority to approve conveyances of restricted lands, but very soon, starting in 1908, Congress began enacting laws that made the restrictions less protective of Indian interests and delegated federal trust responsibility over Indian heirs to Oklahoma state courts. By 1918, Congress approved a law that even gave Oklahoma state courts jurisdiction over Indian heirship determinations. In 1926, Congress passed a law that made the Oklahoma state statute of limitations apply to restricted lands. In 1928, Congress

enacted a law that made Oklahoma state partition laws apply to restricted lands. After enacting various other laws specifically dealing with lands of the Five Nations, Congress enacted the Stigler Act, also known as the "1947 Act," on August 4, 1947. Although there have been a few enactments since 1947 concerning restricted lands in the Five Nations, the Stigler Act remains the primary law that governs probates, guardianships, sales and leases of restricted lands.

The many federal land laws dealing with the status, use and disposition of restricted Indian lands in eastern Oklahoma have consistently referred to the Five Nations collectively as the "Five Civilized Tribes" or listed them by name. With minor differences in each of the allotment agreements, Congress consistently enacted legislation that treated Cherokee, Muscogee (Creek), Seminole, Choctaw and Chickasaw allotments the same. H.R. 2880, therefore applies to allotted lands owned by original enrollees of the Five Nations and their lineal descendants.

The proposed bill does not apply to any of the tribes occupying adjacent lands (the Osage Nation in north central Oklahoma and the "Northeast Eight Tribes" (Miami, Seneca, Modoc, Peoria, Quapaw, Ottawa, Shawnee and Wyandotte), because existing federal laws affecting Five Nations' allotted lands do not apply them. These nine tribes were located in areas that were separate from the domains of the Five Nations, and their tribal lands were allotted pursuant to separate allotment agreements. No other tribal entity ever had any legal or beneficial ownership interest in the tribal lands that were acquired in fee by the Five Nations pursuant to their respective removal treaties and eventually allotted by these Nations in the years following the turn of the twentieth century.

H.R. 2880 will address many different problem areas in the existing federal laws governing our restricted lands. Other tribal leaders will be presenting testimony to the Committee about some of those problems and the way that this bill will address those problems. For my part, I would like to emphasize that one of the main purposes of H.R. 2880 is to address the enormous loss of restricted lands that have been caused by the current federal system.

These problems began almost a century ago. In 1925 M.L. Mott, an attorney for the Muscogee Nation, wrote a report. The title of his report stated his case very clearly. It was called:

> The Act of May 27, 1908, Placing in the Probate Courts of Oklahoma Indian Jurisdiction, A National Blunder: This Jurisdiction Was conferred by Congress; There and There Alone Lies the Power to Withdraw It. In the

Light of the Incontrovertible Record Herein, Can Congress Fail to Do It?

Mr. Mott's report contained statistics and accounts showing that restricted lands were not protected within the state court system. He stated that statistics in 1912 showed that the average cost for administration of estates of white minors was less than 2.3 %, while the cost of administration of estates of Indian minors amounted to the unprecedented sum of 19.3%, both of which were administered in the same jurisdiction and under the same laws. Mott also noted that "the records are replete" with cases where adult Indians, upon coming suddenly into large incomes by reason of oil or mineral development property, were taken into court, declared incompetent, guardians appointed, attorneys and guardians fees allowed on a liberal scale, and orders made upon the Superintendent for the payment of same out of restricted funds. According to Mott, there was a new legal maxim in Oklahoma that an Indian becomes incompetent simultaneously with the acquisition of wealth.

In his report, Mott included text from a 1923 resolution of the Oklahoma Bar Association ("OBA") which references "general turmoil existing in the state," the "dissipation of estates by appointment of one or more guardians or administrators without business experience, and wholly incapable of handling business affairs, and " the appointment of two or more attorneys "on fat salaries" to aid their clients "while the widows, orphans and wards go hungry and poorly clad." *Mott Report* at 2. The 1923 OBA resolution concludes that such conditions "causes one to wonder why he should die and leave an estate in Oklahoma?"

Due to lack of state court protection in the state court system, the greatest loss of restricted Indian lands probably occurred more than half a century ago. Although the loss of restricted land has slowed down (most of the land base having already been destroyed), the inadequacy of the state system and Indian land loss continues. According to an inventory of restricted lands held by individual landowners within the Five Nations, based on annual reports from the Muskogee Regional Office, there were 510,706 acres of restricted Indian lands in 1978 and there were only 392,011 acres of restricted lands left in 1998–meaning that 118,695 acres went out of restricted status in that twenty year period. Out of that total acreage that lost its restricted status, 11,482 acres of Muscogee restricted lands became unrestricted.

One of the major purposes of H.R. 2880 is to address land losses occurring through the Oklahoma court system. One of the ways this will be done is to expressly repeal provisions of the 1947 Act, which places "exclusive jurisdiction" over

guardianships involving Five Nations citizens in the state courts. This will have no effect on jurisdiction of Oklahoma state courts in cases seeking guardianships over the *persons* of an Indian citizen or seeking jurisdiction over a ward's unrestricted property. Guardianship actions will continue to be subject to state court jurisdiction and tribal court jurisdiction in guardianships involving the persons of both adults and children. But there will be additional oversight over restricted property in guardianship cases under H.R. 2880. Under this bill, a guardian may not dispose of restricted property in a state court guardianship action unless the guardian has fully complied with requirements of the bill relating to federal approval of restricted conveyances and leases, as well as any state or tribal laws that may apply.

As I have already stated, other tribal leaders will discuss other ways that H.R. 2880 will benefit individual Indian landowners of restricted lands that were acquired by allotment of the lands of the Five Nations. My purpose in giving this testimony is simply to provide a historical context for some of that other testimony. I have included a brief discussion of the guardianship issues as an example of one way in which I believe that H.R. 2880 will give greater protection to our individual restricted lands. I thank this Committee for the opportunity of offering these comments. I hope that this will be the year that Congress embarks on this important legislative reform.

Testimony of Chief Dee Ketchum
Delaware Tribe of Indians, Bartlesville, Oklahoma
submitted to the
U.S. Senate Committee on Indian Affairs
September 18, 2002

Regarding the Delaware Tribe's Objections to
H.R. 2880 - Five Nations Indian Land Reform Act

I. Introduction.

On behalf of the Delaware Tribe of Indians ("Delaware" or "Tribe"), I would like to extend our appreciation for affording the opportunity to express our concerns during the Senate's consideration of the Five Nations Indian Land Reform Act (H.R. 2880). First, I would like to clarify that the Delaware Tribe has always supported the general goal of removing the blood quantum requirements for inheritance of restricted Indian allotments in northeastern Oklahoma. However, the Delaware Tribe, as well as several other federally recognized tribes, have been concerned about provisions in various drafts of the bill which clearly go beyond the bill's intended purpose and could result unintended consequences. We are most appreciative of Senator Inhofe, and his staff, for acknowledging the Tribe's concerns and seeking to develop a bill that will achieve its intended goals in a fair and equitable manner.

II. Background.

The Delaware Tribe was removed to the lands within the former Cherokee boundaries in approximately 1867. The Delaware Treaty of 1866 promised the Tribe a new reservation in exchange for removal from its reservation in Kansas. The Tribe's reservation was to be formed on lands to be purchased by the United States from the Choctaws, Chickasaws, Seminoles, Cherokee, or Creeks. Unfortunately, the United States failed to provide the promised reservation and the Delaware Tribe was removed to lands within the former boundaries of the Cherokee Nation. At the time of removal, the Delaware tribal members were also to be afforded all the rights of native Cherokees for which the Tribe paid a large sum of money. The Tribe was also to be afforded 160 acres for each individual Delaware tribal member upon which the Tribe would preserve its tribal organization. Such lands were purchased from the Cherokee Nation at an additional price of $ 1.00 per acre. During the allotment era thirty years later, the U.S. Supreme Court determined that the Delaware Tribal members had only purchased a life-estate in the lands, and therefore, most Delaware had no right to retain their original 160 acre allotments. The Court only afforded the original

Delaware settlers from Kansas, referred to as the Registered Delawares, the right to retain their 160 acre homesteads during the dissolution of the Cherokee Nation. While most of the Delawares received their allotments by virtue of having purchased all the rights of native Cherokees, the Registered Delawares retained their original 160 acre allotments purchased from the Cherokee Nation. These Registered Delaware allotments were designated by the Dawes Commission as "D-Allotments."

Without question, the many laws relating to the allotments of the Five Civilized Tribes have been applied to the Delaware D-alloments. However, throughout most of the twentieth century, the Bureau did not acknowledge the jurisdiction of any of the Tribes over the restricted fee allotments. Today, the relative jurisdiction of the Cherokee Nation and the Delaware Tribe over these D-allotments, and the right of the Delaware Tribe to acquire trust land within its traditional settlements, remains in dispute.

While the Delaware Tribe has no interest or right in asserting jurisdiction over the lands of the Cherokee Nation or its members, the Tribe vigilantly seeks to preserve what little land base still exists from the land purchase under its 1866 Treaty. On the other hand, the Cherokee Nation wholly resents the 130-year presence of the Delaware Tribe within the traditional Cherokee's settlements and has an interest in securing whatever legislation may further its goal of effectively expelling the Delaware Tribe's presence in eastern Oklahoma.

Thus, while wholly supporting the goal of removing the blood quantum requirements for inheritance of restricted allotments, the Delaware Tribe has expressed objections to various proposed provisions within the Five Nations Land Reform Act that would imply some Congressional intent to divest the Delaware Tribe's jurisdiction over lands purchased from the Cherokee, or its right to exercise jurisdiction over trust lands held for the benefit of the Delaware Tribe or its members.

The Cherokee Nation has also asserted without merit that it maintains jurisdiction over individuals who have descended from the Cherokee Dawes Roll - whether or not those descendants have chosen to become members of the Cherokee Nation. Thus, the Delaware Tribe expressed objections to earlier language that might imply Congressional intent to recognize Cherokee jurisdiction over persons who have not otherwise chosen to be members of the Cherokee Nation.

II. Continuing Concerns Regarding H.R. 2880

In large measure to the efforts of Senator Inhofe, his staff, and the staff of the Senate Committee, most of the more objectionable and extraneous provisions of the earlier drafts of this legislation have been neutralized. However, an unexpected, altered version of the Committee-referred bill was passed on the floor of the House on June 11, 2002 under a suspension of the rules. We, therefore, had little opportunity to review the last-minute alterations. We greatly appreciate the Committee's efforts to assure that our comments are considered before the Senate takes up consideration of the bill. Below is a discussion of the Tribe's continuing concerns with certain limited provisions of H.R. 2880. We ardently request that the Committee consider our concerns before further reporting the bill to the Senate floor.

1. **Section 2, Findings, (3)(B).** The language recognizes *existing* boundaries of the Five Nations. As discussed in the context of the Arkansas Riverbed Settlement Act, we believe than a Court could reasonably find that a Congressional recognition of a tribe's boundaries is sufficient to acknowledge a continuing reservation. Although this language is only in the "findings" section, the purpose of the section is to convey Congressional intent. The Cherokee Nation does not have a reservation. Unless Congress is intending to establish a reservation for the Cherokee Nation or recognize a continued reservation from 1834, we would request that the language be **changed to state, ". . . the self-sufficiency of individual Indians within the former exterior boundaries of the Five Nations."**

2. **Capitalization of "Individual" before "Indian" throughout the bill.** The use is awkward and creates ambiguity as to whether this is a new term of art. **We request that the Senate consider using a lowercase for "individual" throughout the bill as proposed on the Delaware's red-lined version.** Further, consideration might be given to **deleting "Individual" before "Indian" in Section 4, Definitions.** The definition and use of the term would then be consistent with prior legislation regarding the lands of Five Civilized Tribes.

3. **Section 204(a)(3) Rule of Construction**. This section provides an exception to involuntary partition of *trust lands* in which a tribe may have an interest - but specifically limits the exception to each of the Five Nations. The Five Nations bill ostensibly is intended to address restricted allotment issues. This particular provision only applies to trust lands, and therefore, should be applicable to the other six federally recognized tribes residing in northeastern Oklahoma. **We would therefore request that the provision be modified to state, "are held in trust for an Indian Nation or other Indian Tribe."**

4. **Section 408. Rule of Construction.** This section states that nothing in the Act shall be construed to affect the rights of individual Indians to take land into trust under other federal laws relating to the acquisition of trust property. By only referring to individual Indians and not to Tribes, this provision could be construed as intentionally excluding any protections for the other six Tribes. **We would request that the provision be amended to read, "affect the rights of individual Indians or other Indian tribes under other Federal laws relating to the acquisition and status of trust property. . . ."**

III. Conclusion.

The above requested modifications are necessary to assure that the expressed goals of reforming the inequitable laws governing the restricted allotments in eastern Oklahoma are preserved - without creating new and unintended inequities for other sovereign Tribes. I thank you again for the opportunity to express the Delaware Tribe's concerns and urge that the Committee consider our requested modifications before further moving the bill to the Senate floor.

TESTIMONY
OF
AURENE M. MARTIN
DEPUTY ASSISTANT SECRETARY
BUREAU OF INDIAN AFFAIRS
ON
H.R. 2880, THE FIVE NATIONS INDIAN REFORM ACT
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
SEPTEMBER 18, 2001

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

Background

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

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

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

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

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

Bill Analysis

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

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

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

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Testimony of the United Keetoowah Band of Cherokee Indians in Oklahoma
Dallas Proctor, Chief

Regarding H.R. 2880
Five Nations Indian Land Reform Act

Before the Senate Committee on Indian Affairs

September 18, 2002

Thank you on behalf of the United Keetoowah Band of Cherokee Indians in Oklahoma for the opportunity to testify regarding HR 2880, the Five Nations Indian Land Reform Act. Your Committee has a proud history of protecting and furthering tribal sovereignty. Because of this, we are hopeful that you will amend HR 2880 to reflect the fact that the United Keetoowah Band (UKB) of Cherokee Indians is a separate government from the Cherokee Nation of Oklahoma (CNO) and one with equal claim to inheritance of authority and rights of the historic Cherokee Nation.

There is a complex problem with this bill because of the interwoven nature of the two tribes and their tribal members regarding their restricted lands, but there is a simple fix. The harms that this bill intends to correct were visited upon the historic Cherokee Nation. That historic Cherokee Nation has been succeeded by two federally recognized tribes both having descendants from the 1906 Dawes Rolls and both having descendants who own restricted property --- the United Keetoowah Band of Cherokee Indians in Oklahoma and the Cherokee Nation of Oklahoma. Ninety eight percent of UKB members still live within the boundaries of the historic Cherokee reservation. All of the UKB and CNO members in Oklahoma are affected, and both tribes should be named in the bill as successor to the historic Cherokee Nation. We ask this Committee to amend the definition of the Five Nations in Section 4(1) of the bill to provide that the term "Five Nations" means "the Cherokee Nation through its successors, the United Keetoowah Band of Cherokee in Oklahoma and the Cherokee Nation of Oklahoma....." If the term "Cherokee Nation" were defined as its present successors, CNO and UKB, much of the bill would be repaired. We ask that you do so to ensure that these reforms apply with equal fairness to all descendants of the historic Cherokee Nation.

If enacted without this change, our tribal members face the prospect of having many aspects of their lives related to lands, property, and inheritance determined by a tribal government that is not their own. It would impede the efforts of UKB to protect our members and exercise jurisdiction over our lands.

UKB is a federally recognized tribe. We ask this Committee to respect the fact that the federal government, at the direction of Congress, already recognizes the United Keetoowah Band of Cherokee Indians in Oklahoma as sovereign and independent of the present day Cherokee Nation of Oklahoma. While our people are closely related and we were at one time part of the historic Cherokee Nation, we now have separate federally recognized governments. A small percentage of UKB members, mostly elder, are dually enrolled with CNO, but our enrollment rules now prohibit that. Just as there are a number of Sioux tribal governments in South Dakota, there is more than one Cherokee tribal government in Oklahoma. Indeed, many Keetoowah ancestors existed as the "Western Cherokee" tribe in Oklahoma prior to the arrival of those Cherokees whose descendants comprise the vast majority of the members of the present-day Cherokee Nation of Oklahoma. As evidence of UKB status we note:

• The United States Congress, through the Act of 1946, legislatively authorized the United Keetoowah Band of Cherokee Indians in Oklahoma to organize as a separate tribal entity under the Oklahoma Indian Welfare Act.

• The Secretary of Interior approved the Constitution of the United Keetoowah Band of Cherokee Indians in Oklahoma in 1950.

• UKB was listed by the Department of Interior most recently in the July 12, 2002 Federal Register as a federally recognized tribe.

• UKB contracts under the Indian Self-Determination Act with the BIA to administer funds for services to its members.

There are two successor governments to the 1906 Cherokee Nation rolls. The UKB ancestors were part of the historic Cherokee Nation at the time of the Act of April 26, 1906 that dismantled the Cherokee government, allotted portions of the Cherokee lands and caused the creation of a final roll of the Cherokee Nation. H.R. 2880 addresses problems that flow from that and subsequent legislation affecting the land rights of lineal descendants of the Five Nations, including the historic Cherokee Nation. While only five such governmental entities existed in 1906 that is no longer true. Because UKB members are lineal descendants of the 1906 Cherokee rolls, HR 2880 covers them and their property. However, no role has been provided for their tribal government.

We have attached more detailed information regarding the history of the United Keetoowah Band of Cherokee Indians of Oklahoma. (Attachment 1)

Requested changes to HR 2880. We support the goals of HR 2880. Amending the bill to give UKB its rightful treatment as a tribal government would not undermine the intent of the bill. *We have attached several specific recommendations for proposed changes. (Attachment 2)*

We agree with the intent of H.R. 2880 to provide better protection for individual Indian lands. We agree with the intent to simplify the jurisdiction over probates and conveyances of land by transferring these responsibilities from the state of Oklahoma to the Interior Department. We can all agree that reforms are needed in these and other areas. But H.R. 2880 would complicate the lives of our members by transferring issues regarding their land rights to the control of the Cherokee Nation of Oklahoma – essentially a change from one foreign government to another.

The United Keetoowah Band of Cherokee Indians in Oklahoma thanks you for your hard work on this important bill to end the disparities of Indian land tenure in Oklahoma. Our comments are intended to avoid the creation of new, and unintended disparities. We appreciate your consideration of our concerns.

ATTACHMENT 1

Brief History of the United Keetoowah Band of Cherokee Indians[1]

The Historic Cherokee Indians

The Cherokee Indians originally lived in the southeastern portion of the United States on lands forming present day Georgia, Alabama, Tennessee, North Carolina and South Carolina.[2] While Treaties were first entered into between the United States and the Cherokee Nation in the late 1700's,[3] establishing boundaries of the Cherokee Nation and affirming loyalties of the Tribe to the United States, the Cherokees did not have a centralized government and the people lived in towns located throughout the Cherokee territory.[4]

History of the Western Cherokees

In 1808, a delegation of Cherokees from the upper and lower towns of the Cherokee Nation went to Washington, D.C. to inform the President of the United States that not all Cherokee people wanted to pursue what was deemed a "civilized" life.[5] The delegation requested that the President divide the upper towns, whose people wanted to participate in agriculture and establish a regular government, from the lower towns whose people wanted to continue the hunter way of life.[6] Further, the people of the lower towns desired to remove across the Mississippi River onto vacant lands within the United States so that they might continue the traditional Cherokee life.[7]

On January 9, 1809, the President of the United States allowed the lower towns to send an exploring party to find suitable lands on the Arkansas and White Rivers.[8] In 1817, the United States ceded such lands to the Western Cherokees in exchange for a portion of the Cherokee lands they had occupied and were entitled to in the East.[9] One third of the entire Cherokee

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[1] Please note that the following materials are excerpted from a brief prepared for the United States Department of Interior in connection with the pending proposals to resolve the historic Cherokee Nation claim to the Arkansas Riverbed lands. As such, the citations refer to many historic documents collected in two volumes of Exhibits prepared to accompany that brief. Those exhibits are available, on request, from the UKB Washington Counsel through Judith A. Shapiro, Hobbs, Straus, Dean & Walker, 202-822-8282.

[2] See United States v. Old Settlers, 148 U.S. 427, 434 (1893).

[3] See Treaty with the Cherokee, Nov. 28, 1785, 7 Stat. 18 (Exh. 4); Treaty with the Cherokee, July 2, 1791, 7 Stat. 39 (Exh. 5); Treaty with the Cherokee, Oct. 2, 1798, 7 Stat. 62 (Exh. 6).

[4] In the Eighteenth Century, the Cherokees numbered over ten thousand and were located in the southeastern United States in sixty or more towns. These towns operated as separate autonomous units with no unified government. Rennard Strickland, Fire and the Spirits 4 (1975) (Exh. 7). One of these towns was "Kituhwa," the nucleus of the "mother towns" of the historic Cherokee people, from which Keetoowah organizations take their name. Report of Charles Wisdom, Collaborator, Office of Indian Affairs (May 25,1937)(citing James Mooney's report, "The Myths of the Cherokee People").

[5] Treaty with the Cherokee, July 8, 1817, preamble, 7 Stat. 156 (Exh. 8).

[6] Id.

[7] Id.

[8] Id.

[9] Id., art. 1, 2 & 5.

Nation emigrated west.[10] Those Cherokees who moved were called the "western Cherokees" or "old settlers." [11]

By 1828, dissatisfied with their lands on the Arkansas and White Rivers, partly due to encroachment by white settlers, the Western Cherokees entered into a treaty with the United States to move onto lands further west.[12] The Treaty granted the Western Cherokees seven million acres of land running along the Arkansas, Canadian and Grand Rivers.[13] This land grant includes a portion of present-day Northeastern Oklahoma and the Arkansas Riverbed lands, which are at issue in the proposed settlement of the pending Claims case.[14] The Western Cherokees were also given a perpetual outlet West, as far as the sovereignty of the United States extended.[15]

Those Cherokees who declined to leave the eastern homelands for the new lands in the West were called the Eastern Cherokees.[16] The southeastern states, unhappy that these Eastern Cherokees remained, passed various harassing and vexatious legislation to encourage the Indians to leave.[17] Violent incidents were frequent between the Eastern Cherokees and the white people, especially in Georgia.[18] The southeastern states placed pressure on the federal government to remove these remaining Indians and extinguish Indian title to the lands within those states.[19]

The Eastern Cherokees are Forced onto Western Cherokee Lands

To resolve the concerns of the southeastern states, the United States entered into the Treaty of New Echota with the Cherokee Tribe on December 29, 1835.[20] This treaty required the Eastern Cherokees to cede all Cherokee lands east of the Mississippi River and provided for the removal of those Eastern Cherokee Indians from that area.[21] These Eastern Cherokees would be removed to the land then held by the Western Cherokees.[22]

The Treaty of 1835 was intended to reunite the Cherokee people into one body and create a permanent home for them.[23] It also promised that the lands ceded to the Cherokee Nation in the 1835 Treaty would "in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory."[24]

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[10] United States v. Old Settlers, 148 U.S. 427, 436 (1893).
[11] Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, *29 (1905).
[12] Treaty with the Western Cherokee, May 6, 1828, preamble, 7 Stat. 311 (Exh. 9).
[13] Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311 (Exh. 9).
[14] Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311 (Exh. 9); Cherokee Nation of Oklahoma v. United States, No. 218-89L (Cl. Ct.). The Cherokee Nation case was originally filed on April 21, 1989, in the United States Claims Court, which was replaced by the United States Court of Federal Claims. To avoid confusion, all citations to this case will specify "Riverbed Claims Case."
[15] Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311(Exh. 9).
[16] United States v. Cherokee Nation, 202 U.S. 101, 129 (1906).
[17] See Cherokee Nation v. Georgia, 30 U.S. 1, 9-10 (1831).
[18] Id. at 14.
[19] Id. at 8.
[20] Treaty with the Cherokee (Treaty of New Echota), December 29, 1835, preamble, 7 Stat. 478 (Exh. 10).
[21] Id., art. 1 & 16.
[22] Id., art. 2.
[23] Id., preamble.
[24] Id., art. 5.

Both the "Western Cherokees" and "Eastern Cherokees" objected to the treaty, stating that the signers had not been authorized representatives of the groups.[25] Regardless of the protests, however, the Eastern Cherokees were removed onto the lands of the Western Cherokees.[26]

After this influx, the Eastern Cherokees significantly outnumbered the Western Cherokees. Tensions escalated between the two groups.[27] The Eastern Cherokee newcomers wanted their form of government to replace the government already put in place by the Western Cherokees, who, objected to such displacement of their own powers.[28]

In an effort to lessen the tensions amongst the two communities now within one Cherokee land base, the Western and Eastern Cherokees met in convention in July of 1838.[29] At the convention, the groups entered into an "Act of union between the Eastern and Western Cherokees."[30] The validity of the Act of Union was not recognized by the Western Cherokees because they had not been adequately represented at the convention. They further believed that those representatives signing the Act of union on behalf of the Western Cherokees did so without authority.[31] Many of the Western Cherokees refused to attend the convention because they knew they were outnumbered by the Eastern Cherokees.[32] The Eastern Cherokees, by force of number, were able to control the Cherokee Nation government.[33] This act of union declared that the two communities "mutually agree to form ourselves into one body politic under the style and title of the Cherokee Nation."[34] The act of union also stated that all lands of the Cherokees shall vest in the one Cherokee Nation.[35]

But even with the act of union, tensions between the Cherokee groups survived, and "between the years 1838 to 1846, the Cherokee country was the scene of intestinc[sic] disorders of the gravest character, destroying the rights and liberties of certain of the Cherokees, and endangering the peace of the frontier."[36]

In 1846, the United States entered into a treaty with the Cherokee Nation as a whole, recognizing that "serious difficulties have, for a considerable time past, existed between the different portions of the people constituting and recognized as the Cherokee Nation of Indians . . .."[37] The 1846 Treaty reaffirmed that the differing factions of the Cherokee Nation were one body politic and made the Eastern and Western Cherokees, together, party to the terms of the contested 1835 Treaty. The 1846 Treaty also specifically reaffirmed that the lands of the Cherokee Nation were to be held in common for all the Cherokee people, stating:

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25 Western or Old Settler Cherokees v. United States, 82 Ct. Cl. 566, 1936 WL 3016, *10 (1936).
26 See, e.g., United States v. Old Settlers, 148 U.S. 427, 443 (1893)(describing forced military removal).
27 Western or Old Settler Cherokees v. United States, 82 Ct. Cl. 566, 1936 WL 3016, *9 (1936).
28 United States v. Old Settlers, 148 U.S. 427, 444 (1893).
29 Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, *10 (1905).
30 Id.
31 Id. (Citing a letter from General Arbuckle, the military commander at Fort Gibson, to the Secretary of War, dated January 1840.)
32 Id.
33 Id.
34 Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, *11 (1905).
35 Id.
36 United States v. Old Settlers, 148 U.S. 427, 444 (1893).
37 Treaty with the Cherokee, August 6, 1846, preamble, 9 Stat. 871 (Exh. 11).

> That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit . . ." [38]

Moreover, the lands included in the 1828 Treaty, which first conveyed the Arkansas Riverbed lands now in question, were to be for the whole Nation:

> . . . it has been decided . . . that portion of the Cherokee people known as the "Old Settlers," or "Western Cherokees," had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole nation, including as well that portion then east as that portion then west of the Mississippi . . . .[39]

A Formal Keetoowah Society is Created

Many of the Western Cherokees saw the approaching Civil War as inevitable, and perceived it as a threat to traditional Cherokee culture.[40] They also acknowledged that the Cherokee Nation was still divided into two main factions, with their faction being in the minority.[41] This group of traditional Cherokees gathered "in the dark of night and in the woods" to form an organization for self-protection, cultural preservation and to honor their relations with the United States.[42] This organization adopted a constitution in 1859, calling itself the "Keetoowah Society." [43]

In 1860, the Keetoowah Society met several times to develop laws under their constitution to govern its members.[44] "Only full blood Cherokees uneducated, and no mixed blood friends" were allowed membership in the Keetoowah Society.[45]

In the beginning, the Keetoowah Society occupied a prominent role in Cherokee politics, but this power diminished as the number of mixed-bloods and intermarried citizens overwhelmed the Cherokee Nation population.[46]

Federal Attempts to Dissolve the Cherokee Nation

In preparation for Oklahoma statehood, Congress passed the Indian Appropriation Act in 1893, authorizing the Dawes Commission to negotiate allotments with the Five Civilized Tribes.[47] The Keetoowahs opposed allotment, passing a resolution asserting that the lands of the

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38 Id., art. 1.
39 Id., art. 4.
40 1859 Constitution of the Keetoowah Society, Deliberation and ch. I § 1 (Exh. 1).
41 Id., ch. I § 2.
42 Id., Deliberation.
43 Id.
44 Id., ch. I-XVI.
45 Id., ch. II § 6.
46 Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 6-7 (1996) (Exh. 47).
47 Indian Appropriation Act, 52nd Cong., § 16 (March 3, 1893)(Exh. 12).

Cherokees were common property.[48] While the Keetoowahs agreed to be enrolled in the Dawes Commission roll, they did so under protest.[49]

In 1900, the Dawes Commission negotiated an agreement with the Cherokee people regarding the allotment of tribal lands and the dissolution of the tribal government.[50] The agreement also stated that the "tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such future legislation as Congress may deem proper."[51] The agreement was ratified by Congress on March 1, 1901, but rejected in a subsequent election of the Cherokee people on April 29, 1901.[52] Members of the Keetoowah Society either voted against the agreement or abstained from voting.[53] The Cherokee National Council, however, adopted a memorial to Congress on December 18, 1901 requesting that the Cherokee lands be allotted.[54] In 1902, Congress passed a law that required the allotment of Cherokee lands and terminated the tribal government as of March 4, 1906.[55] This Act was ratified by the citizens of the Cherokee Nation, and is commonly described as the Cherokee Agreement.[56]

With the termination of the Cherokee tribal government approaching, the Keetoowahs wanted to transform their organization into a political body that could take the place of the dismantled government of the Cherokee Nation and "provide a means for the protection of the rights and interest of the Cherokee people in their lands and funds . . . ."[57] In 1905, the Keetoowah Society applied for and received a federal charter under a process authorized by the treaty of 1866 and Act of June 27, 1898.[58]

By the Act of 1906, Congress permitted the Cherokee government to continue "until otherwise provided by law," but only with limited powers.[59] The Principal Chief, to be appointed by the President of the United States, was required to execute documents upon notice by the Secretary of the Interior.[60] If the Principal Chief did not sign within the required time, the Secretary was authorized to sign such documents.[61] Additionally, the Office of Indian Affairs determined that the Act of 1906, while allowing the current tribal officers to continue in their office, did not "contemplate[d] . . . that any further elections should be held in the various

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48 Resolution of the Keetoowah or Fullblood Cherokees, at 1 (Nov. 28, 1900) (Exh. 13).

49 Id.

50 See Act of March 1, 1901, preamble, 31 Stat. 848 (Exh. 14).

51 See Act of March 1, 1901, §58, 31 Stat. 848 (Exh. 14).

52 See Memorial from the Cherokee Indians, together with the draft of a bill for the allotment of lands, at 1 (April 16, 1902) (Exh. 15).

53 Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 7 (1996) (Exh. 47).

54 See Letter from Oscar L. Chapman, Assistant Secretary, to the Attorney General, November 6, 1935, at 7 (Exh. 16).

55 Cherokee Agreement 1902, Pub. L. No. 57-241, 32 Stat. 716 (Exh. 17).

56 See Letter from Oscar L. Chapman, Assistant Secretary, to the Attorney General, November 6, 1935, at 8.

57 1905 Constitution of the Keetoowah Society, Res. No. 1 (Exh. 2).

58 See Certificate of Incorporation of the Keetoowah Society, United States Court for the Indian Territory, September 30, 1905 (Exh. 2).

59 Act of April 26, 1906, § 28, 32 Stat. 137, 148 (Exh. 18).

60 Id., § 6.

61 Id.

nations of the Five Civilized Tribes."[62] In effect, the Cherokee Nation was to be placed under the management of the President of the United States, acting through the Principal Chief.[63]

The Act of 1906 also stated that any unallotted lands would be held by the United States in trust for the "use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear on the rolls as finally concluded . . . ."[64] The Arkansas Riverbed lands, which were ceded to the Cherokees in the 1828 Treaty, were not allotted to individual Indians so fell within the provisions of the 1906 Act.[65]

In 1907, Oklahoma became a State.[66] The Act that authorized Oklahoma Statehood also preserved the authority that the United States had had prior to the passage of the Act over the Indians, their lands and property.[67] Upon statehood, Oklahoma began exercising control over the Arkansas Riverbed lands.[68]

W.C. Rogers was Principal Chief of the Cherokee Nation was W.C. Rogers from 1903 until his death in 1917, deemed to be the last Principal Chief elected under the 1839 Cherokee constitution.[69] The Commissioner to the Five Tribes reported, in 1914, that "the tribal form of government of the Cherokee tribe was practically abolished at the close of the fiscal year June 30, 1914, all officers having tendered their resignations to be effective as of that date."[70]

After Principal Chief Rogers' death in 1917, the President of the United States, pursuant to the Act of 1906, "appointed from time to time as necessity arose certain members of the Cherokee Nation to the office of Principal Chief of said nation, the appointments in each case being for certain temporary periods."[71] Over the next 19 years, there would be six Principal Chiefs appointed by the President.[72] The Presidentially appointed Chiefs usually held office for only one day, with only one Principal Chief holding office for as long as 17 days.[73] The

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62 Letter from C.J. Rhoads, Commissioner of Indian Affairs, to Mr. Frank Boudinot, Attorney at Law, October 6, 1931, at 1 (Exh. 19).

63 See Act of April 26, 1906, § 28, 32 Stat. 137, 148 ("That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized, by law, until otherwise provided by law, . . . *Provided*, that no act, ordinance, or resolution . . . of the tribal council or legislature of any of said tribes or nations shall be of validity until approved by the President of the United States: *Provided further*, That no contract involving the payment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.") (Exh. 18).

64 Id., § 27.

65 See Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970).

66 See Enabling Act of June 16, 1906, 34 Stat. 267.

67 Id.

68 See Choctaw Nation v. Cherokee Nation, 393 F. Supp. 224, 246 (E.D. Okla. 1975).

69 See Letter from the Assistant Secretary F.M. Goodwin to the Attorney General, July 18, 1921 (Exh. 50).

70 Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 11 (1996). (referencing the Annual Report of the Commissioner to the Five Civilized Tribes, 1914) (Exh. 47); see also, Letter from the Commissioner on Indian Affairs to Frank Boudinot, Attorney, October 6, 1931 (Exh. 19).

71 Letter from the Commissioner on Indian Affairs to Frank Boudinot, Attorney, October 6, 1931, at 2 ("There is at present no principal chief or other tribal official of the Cherokee Nation.") (Exh. 19).

72 Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 11 (1996) (Exh. 47).

73 Id.

remainder of the 19 years, the President of the United States left the office of Principal Chief vacant.[74]

In 1941, the President of the United States appointed J. Bartley Milam as Principal Chief of the Cherokee Nation.[75] On Milam's death in 1949, W.W. Keeler was appointed.[76]

In 1936, the Assistant Secretary of the Interior reported:

> After the expiration of terms of Office, death, etc., of the then existing tribal officers, no other officers were ever elected or appointed except a few temporary appointments of principal chiefs for certain specific purposes. Such appointments expired when the business for which the appointments were made had been completed.
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> Speaking generally, it may be said that the Cherokee National Government has lost most, if not all, of its 'governmental' power and authority. Such powers as the Cherokee government may have are limited to what may be termed business matters.[77]

As the Cherokee Nation government ceased operation, the Keetoowah Society became more active. The Society filed cases in federal court to secure the rights of the Cherokee people.[78] In 1914, the Keetoowah Society had its attorneys bring a claim for interest on funds owed the Cherokees under the provisions of the 1835 Treaty.[79]

Evolution of the United Keetoowah Band of Cherokee Indians in Oklahoma

As the Indian Reorganization Act[80] evolved, the Keetoowahs began efforts to organize as a separate tribal entity.[81] A.M. Landman, Superintendent of the Five Civilized Tribes, believed that the affairs of the impoverished full-blood Cherokees should be handled by the full-bloods themselves.[82] He acknowledged that mixed-blood Cherokees would control any tribal organization.[83]

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74 Id.

75 Id. at 23.

76 Id. at 23-24

77 Letter from the Assistant Secretary of the Interior to the Attorney General, August 20, 1936, at 23 (Exh. 52).

78 See *Cherokees Seek to Recover Interest on Deferred Payment*, The Red Man, Vol. 7, No. 3., October 1914 (Exh. 20).

79 Id.

80 Act of June 18, 1934, 48 Stat. 984.

81 See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 14 (1996) (Exh. 47).

82 Id. (citing a questionnaire on the status of tribal governments that the various Indian superintendents within the Office of Indian Affairs were required to fill out).

83 Id.

While the Indian Reorganization Act was inapplicable to Oklahoma Indians, another Act of Congress, the Oklahoma Indian Welfare Act ("OIWA"), would allow them to organize.[84] The Keetoowahs continued their efforts to do so.

In 1937, Dr. Charles Wisdom, an anthropologist working for the BIA, began investigating the history of the Keetoowahs and their desire to organize separately.[85] Dr. Wisdom, however, did not refer in his report to the 1905 federal charter that the Keetoowah Society had secured, authorizing the Society to organize as a legal entity.[86] Based on Wisdom's report, Acting Solicitor for the Department of the Interior Frederick Kirgis, opined that the Keetoowahs could not be considered a band under the Oklahoma Indian Welfare Act.[87] Kirgis believed the UKB was distinguishable from the Creek Tribal towns because the Creek Tribal towns had once been organized governmental units of the Creek Indians -- functioning political subdivisions of the Creek Nation.[88] He believed that the same distinctions did not apply to the Keetoowahs.[89]

Despite this opinion, the Keetoowahs did not give up their efforts to organize under the OIWA. In 1939, Ben, the Field Agent for the Five Civilized Tribes Agency found the 1905 federal charter of the Keetoowah Society and thought that the Keetoowahs could organize under the OIWA.[90] The Keetoowahs then began efforts to formalize a constitution.[91]

In 1940, William Zimmerman, Jr., Assistant Commissioner, Office of Indian Affairs wrote a letter stating that: "it has been agreed that further effort should be made to establish, if possible, the eligibility of the Kee-too-wah Society to organize as a band under the Oklahoma Act."[92] In 1942, the Keetoowahs requested that Superintendent A.M. Landman recognize the Keetoowahs under the OIWA.[93]

Officials in the Office of Indian Affairs began recommending that the Keetoowahs be recognized as a band of Indians under the Oklahoma Indian Welfare Act, or that appropriate legislation be initiated to achieve recognition.[94] The Principal Chief of the Cherokee Nation also

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[84] Act of June 26, 1936, 49 Stat. 1967.

[85] See Letter from A.C. Monahan, Regional Coordinator to Commissioner of Indian Affairs, June 28, 1937, and attached report by Charles Wisdom entitled "Memorandum on the Tribal Character of the Keedoowah Society of the Cherokee" (Exh. 23).

[86] See Charles Wisdom, Memorandum on the Tribal Character of the Keedoowah Society of the Cherokee (Exh. 23).

[87] Memorandum for the Commissioner of Indian Affairs by Frederic L. Kirgis, Acting Solicitor, July 29, 1937 (Exh. 24).

[88] Id.

[89] Id.

[90] See Letter from A.C. Monahan, Coordinator to Mr. Daiker, Indian Organization, August 2, 1939 (Exh. 25).

[91] See Draft of Constitution and By-laws of the United Keetoowahs Cherokee Band of Indians in Oklahoma, 1939 (Exh. 51).

[92] See Letter from William Zimmerman, Jr., Assistant Commissioner to A.A. Exendine, April 13, 1940 (Exh. 26).

[93] See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 19 (1996)(Exh. 47).

[94] See Letter from A.A. Exendine, Organization Field Agent for the Office of Indian Affairs, to the Commissioner on Indian Affairs, October 26, 1942 (Exh. 28).

supported legislation that would allow the Keetoowahs to organize as a band of Indians and wrote a letter to the Commissioner on Indian Affairs in 1942 expressing his support.[95]

On April 25, 1944, D'Arcy McNickle, then Chief of the Branch of Tribal Relations in the Bureau of Indian Affairs, wrote that he disagreed with the 1937 Kirgis Opinion.[96] McNickle proposed that the Kirgis Opinion be revised, and that the Keetoowahs be allowed to separately organize.[97] According to the McNickle, the Keetoowah Society was more than a "secret society." He stated, "It has been a formally organized body at least since 1858, with representative districts, and for many years it had a common leadership."[98] McNickle found that the Keetoowahs, through all their actions, "exercise[d] independent political action, even to the point of initiating hostile proceedings."[99] McNickle noted that the Keetowah name and the people originated from the historic Cherokee town of Kituhwa, in the eastern homelands, prior to western migration.[100] McNickle stressed that Keetoowah denoted a tribal town " . . . historically . . . on a par with the Creek towns in that it was originally an independent unit of government. Hence, the Solicitor is wrong in saying that Keetoowah was not historically a governing unit."[101] McNickle concluded his opinion by recommending that the 1937 Kirgis opinion be revised.[102]

The Interior Department became a proponent of federal recognition for the Keetoowahs, and on March 24, 1945, Acting Secretary of Interior, Abe Fortas, wrote a letter to Henry M. Jackson, Chairman of the Committee on Indian Affairs, in support of the bill to recognize the Keetoowahs under the Oklahoma Indian Welfare Act.[103] Fortas stated that the Keetoowah organization:

> Represents nearly one-half of the Cherokees possessing one-half or more degree of Indian blood now residing in the territory known as the Cherokee Nation of Oklahoma.[104]

That letter would later be included in the Report that accompanied the bill.[105]

On August 10, 1946, Congress passed the bill to recognize the "Keetoowah Indians of the Cherokee Nation of Oklahoma . . . as a band of Indians residing in Oklahoma within the meaning of section 3 of the Act of June 26, 1936."[106] The Tribe created its base membership roll in 1949,

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95 Letter from J. Bartley Milam, Principal Chief of the Cherokee Nation, to John Collier, Commissioner on Indian Affairs, April 10, 1942 (Exh. 29).

96 D'Arcy McNickle analysis of Keetoowah Band, April 24, 1944 (Exh. 27).

97 Id. at 4.

98 Id. at 3.

99 Id.

100 Id. at 2

101 Id. at 2

102 Id. at 4.

103 See Letter from Abe Fortas, Acting Secretary of the Interior to Congressman Henry M. Jackson, Chairman, Committee on Indian Affairs, March 24, 1945, included in H.R. Rep. No. 447 (1945) (Exh. 30).

104 Id. at 2.

105 H.R. Rep. No.447 (1945) (Exh. 30).

106 See Act of August 10, 1946, Pub. L. No. 79-715 (Exh. 3).

for certification by the Secretary of the Interior.[107] The Tribe's constitution and by-laws were finalized and approved by the Secretary of the Interior on May 8, 1950 then ratified by its members on October 3, 1950.[108] Today, in order to be a member of the United Keetoowah Band of Cherokee Indians in Oklahoma, individual Cherokee Indians must be at least one-quarter Cherokee Indian blood and be a descendant of an individual on the (certified) 1949 roll or the final rolls of the Cherokee Nation, which were closed in 1907.[109] Ninety-eight percent of the currently enrolled members presently live within the nine districts that constitute the historic Cherokee Nation Reservation.[110] Nearly one half of the members still speak the traditional Cherokee language, some using English only as a second language.[111]

In 1949, the President of the United States appointed W.W. Keeler (a Philips Oil Company executive) as Principal Chief to the Cherokee Nation.[112] Keeler was only the second appointed Chief to hold office for any significant period of time.[113] The Presidential authority to remove or appoint the Principal Chief of the Cherokee Nation was shortly thereafter delegated to the Secretary of the Interior,[114] who continued to appoint Keeler as Principal Chief until 1971.

On July 5, 1976, the CNO adopted a constitution.[115] Soon thereafter, the CNO was added to the list of federally recognized Indian tribes.[116] The UKB and the CNO are both comprised of descendants of the historic Cherokee Nation, each requires its members to prove descent from an individual on the final Cherokee Roll of 1907.[117]

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107 See Letter from W.O. Robert, General Superintendent to Mr. William Zimmerman, Jr., Assistant Commissioner of Indian Affairs, June 28, 1949, with membership roster of the United Keetoowah Band of Cherokee Indians in Oklahoma attached (Exh. 31). The 1949 roll consisted of an earlier 1939 roster of voting members, with the addition of some few honorary "non-voting members." (Exh. 31b) The 1949 roll contains 25 persons with no verified degree of Indian blood from a total of 1234 listed. (Exh. 31a). Voting eligibility in 1939 was limited to "All Dawes Commission enrolled or descendants of such enrolled Cherokee Indians, provided they are 21 years of age or older and are of one-half or more degree Cherokee Indian blood." ("Notice to United Keetoowah Cherokee Band Of Indians In Oklahoma," 1st page of Exh. 51)

108 Constitution and By-laws of the United Keetoowah Band of Cherokee Indians Oklahoma, Ratified October 3, 1950 (Exh. 32).

109 See United Keetoowah Band of Cherokee Indians of Oklahoma Constitution (Exh 32); Membership Ordinance (Exh. 33); and Procedures for Membership Application (Exh. 34). Because the 1949 roll included some few honorary members, that two percent included in 1949 would not, in fact, be required to prove such descent. That loophole has been closed as to any new enrollees not descending from the 1949 roll. Thus, for purposes of this case, substantially all present UKB members descend from the 1907 roll.

110 Affidavit of Lucy Wolf (Exh. 59).

111 Id.

112 See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 24 (1996) (Exh. 47).

113 Id at 11, 23-24.

114 See Exec. Order No. 10,250, ¶ (o), 16 Fed. Reg. 5385 (June 5, 1951).

115 1975 Constitution of the Cherokee Nation of Oklahoma, preamble (Exh.36).

116 Indian Entities Recognized and Eligible to receive Services from the United States Bureau of Indian Affairs, 67 Fed. Reg. 46,331 (July 12, 2002)(current list).

117 1975 Constitutino of the Cherokee nation of Oklahoma, art. III (Exh.36); United Keetoowah Band of Cherokee Indians Membership Ordinance of 1990, § 82 (Exh. 33).

ATTACHMENT 2

Proposed Amendments to H.R. 2880
Five Nations Indian Land Reform Act

Clarify the definition of Five Nations. In Section 4 (1) the definition of Five Nations should be amended to read (proposed new language underlined):

(1)FIVE NATIONS.- The term "Five Nations" means the Cherokee Nation through its successors the United Keetoowah Band of Cherokee Indians in Oklahoma and the Cherokee Nation of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Seminole Nation of Oklahoma, and the Muscogee (Creek) Nation, collectively, which were historically referred to as the "Five Civilized Tribes."

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If the above change is NOT made to the definition of "Five Nations," then we ask that, at a minimum, the following changes be made in HR 2880:

Escheat. Of particular concern is the escheat provision in Section 403(b)(5). As presently proposed in the bill, the restricted property of a UKB member who dies without heirs escheats not to the UKB, but to the Cherokee Nation of Oklahoma – whose "blood" all UKB members carry. We believe this to be an unanticipated result, and one that must be remedied. We propose that:

the proposed amendment to Public Law 91-240 currently included in the bill be deleted and that the language "or a person of the blood of said Tribes" be stricken from Public Law 91-240. The deletion of this language will exclude the UKB members from its application and make this provision of law consistent with the overall intent of Public Law 91-240, the law applicable to other Indian Tribes in the nation and this bill.

Heirship and Probate. A similar problem is posed by the heirship and probate provisions in Section 302, which would transfer administrative responsibility to the Secretary or her designee. Designation would presumably include the ability of an Indian Tribe to enter into a contract to carry out such services in place of the Secretary pursuant to the Indian Self-Determination Act (ISDA). The Cherokee Nation of Oklahoma has repeatedly asserted that it has exclusive power to enter into such contracts – even to govern the affairs of UKB members -- within the former Cherokee Reservation. UKB asks for clarification that the Secretary may not, pursuant to the ISDA, delegate administration of matters that are so central to a Tribe's membership interests and inherently central to the UKB's services to its own members. To preserve that governmental right, we ask that the issue be addressed through the definition section, by adding the following language to the definition of Secretary at Section 4(7):

. . . except that the Secretary shall not authorize any Indian Tribe to administer the property interests of another Indian Tribe or the members of another Indian Tribe without the written consent of the affected Indian Tribe.

Conveyance of individual restricted properties. A subsidiary problem is posed by the conveyance of individual restricted properties to individuals of another Indian Tribe or to the tribal government of a different Indian Tribe. While free alienation of property is not problematic, the incidental transfer of tribal jurisdiction could be. We suggest that language be incorporated to provide that such transfers of restricted property between individuals have no affect on existing tribal jurisdiction, and that transfers from an individual to an outside tribal entity not divest jurisdiction without the written consent of the Indian Tribe exercising current jurisdiction. To accomplish this, we suggest that a subsection (3) be added to Section 202(a):

> (3) JURISDICTION. Transfer of restricted property by an Individual Indian to an Individual Indian belonging to another Indian Tribe shall not affect jurisdiction over that property; transfer of restricted property by an Individual Indian to the government of an Indian Tribe shall not operate to transfer jurisdiction over that restricted property without the written consent of the Indian Tribe currently exercising jurisdiction over that restricted property.

Change of land status should be consistent with current law applicable to the rest of Indian country. Another jurisdictional problem exists in Section 107, which requires the Secretary to place into restricted status currently unrestricted portions of property owned by Individual Indian owners. The UKB is concerned that this provision will dramatically increase the amount of property that the Cherokee Nation of Oklahoma – whose members own a large quantity of unrestricted portions of land – exercises jurisdiction over without allowing the Secretary to consider the impacts on the UKB. Congressional members informed us that this bill was not intended to change the level of jurisdiction of any tribe, yet this provision will do just that. Any provision to change the status of land should be consistent with current law applicable to the rest of Indian Country, which requires individuals to submit an application to the Secretary, who then has discretion to convert the status, after permitting other governmental entities to comment on the application.

The UKB would also like to point out language in Section 2(3)(B) of the Findings in the bill, may be interpreted to confer improper significance to the boundaries of the historic Cherokee Nation reservation. The bill neither establishes nor disestablishes any reservation of the Historic Cherokee Nation. However, because the bill is not geographically limited to restricted property located "within the exterior boundaries of the Five Nations," we suggest deleting that restriction from the Findings. We recommend that the language be changed to

"has impeded the self-determination and economic self-sufficiency of Individual Indians"

TESTIMONY OF LINDSAY G. ROBERTSON, SPECIAL COUNSEL ON INDIAN AFFAIRS TO GOVERNOR FRANK KEATING OF OKLAHOMA, IN SUPPORT OF HR 2880, "THE FIVE NATIONS INDIAN LAND REFORM ACT" BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS, SEPTEMBER 18, 2002

Chairman Inouye and Vice-Chairman Campbell:

Thank you, Mr. Chairman, Vice-Chairman Campbell and other members of the Committee for the opportunity to testify on behalf of Governor Frank Keating in support of HR 2880, the Five Nations Indian Land Reform Act.

The Five Nations -- the Muscogee (Creek), Cherokee, Chickasaw, Choctaw and Seminole Nations -- have long constituted an important cultural and economic presence in Oklahoma. Through the execution of numerous compacts, the State of Oklahoma has in recent years had a constructive and mutually beneficial sovereign-to-sovereign relationship with each of these Nations. This relationship has been complicated somewhat by the State's exercising of federal trust functions in areas addressed by HR 2880. Specifically, due to the unique federal legislative treatment of Five Nations' allotments, state courts have been required to act as federal instrumentalities for the past ninety-six years in implementing federal laws governing the disposition of these lands, including laws governing approval of sales, leases and probates of restricted property. In addition to complicating the relationship between the State and the Nations, this has placed an unusual burden on the Oklahoma judiciary.

The Governor has observed the development of the Five Nations Land Reform Act over the past several years. It was most recently introduced earlier this year in the United States House of Representatives as HR 2880 and a substitute version was approved by the House on June 11, 2002, after final concerns by various interest groups were addressed. As currently written, this legislation will have a significant positive impact not only on individual Indian owners of Five Nations allotments, but also on non-Indian owners of former restricted property. It will also have a positive impact on the courts of the State of Oklahoma. Although HR 2880 will require state courts to continue to exercise limited jurisdiction over partitions and quiet title actions involving restricted lands, it will return most federal trust functions back to the federal government. It will establish an efficient process for the approval of sales and leases of restricted property through a federal administrative process. It will also facilitate the probate of estates containing restricted property by placing that function with the federal government, thus eliminating the costs necessarily associated with state court probate actions and enabling Indian heirs to secure probates at no cost through use of federal administrative law judges.

HR 2880 also contains a number of provisions that are designed to protect vested property rights of third parties and establishes a more streamlined process for curing of title defects caused by complicated federal law requirements affecting property that was formerly restricted. Thus, it will be beneficial to both Indian and non-Indian citizens in Oklahoma. Although HR 2880 will slow the removal of lands from restricted status, it will not increase the restricted land base and will not have any negative impact on state and local tax revenues.

Governor Keating believes that Oklahoma citizens and interest groups have been afforded the opportunity to participate in the bill's evolution during the past few years. These groups have included the Probate Committee and the Real Property Section of the Oklahoma Bar Association and the Indian Nations themselves. Indeed, the Nations have taken an active part in the drafting of the bill. He supports the enactment of HR 2880 into law, and he looks forward to seeing the positive impact that this important legislation will have on the citizens of Oklahoma.

TESTIMONY OF CHADWICK SMITH, PRINCIPAL CHIEF OF THE CHEROKEE NATION, IN SUPPORT OF HR 2880, "THE FIVE NATIONS INDIAN LAND REFORM ACT" BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS SEPTEMBER 18, 2002

Chairman Inouye and Vice-Chairman Campbell:

Let me begin by thanking you, Chairman Inouye, Vice-Chairman Campbell and other members of the Committee, for this unique opportunity to present my views in support of HR 2880, the Five Nations Indian Land Reform Act. I say that the opportunity is "unique" because although over the course of the 20th Century, the United States Congress has passed numerous laws—in fact, dozens of laws—pertaining specially to the allotted lands of the Cherokee, Creek, Choctaw, Chickasaw and Seminole Nations, none of those laws was particularly good from the Indian perspective, and many if not most were quite bad. On the other hand, HR 2880 will be *good* for the Indian landowners, and if passed into law it will be *the first time in over 100 years* that Congress has taken a truly dramatic step toward protecting the interests of Indian owners of restricted lands in eastern Oklahoma.

Before describing certain aspects of the bill and what it attempts to accomplish for Indians in eastern Oklahoma, I would like to give the Committee a very brief overview of the legal background and initiative behind what is now HR 2880.

I. Overview of the initiative to reform the federal laws applicable to restricted allotments of the Five Nations.

Unlike most reservation lands in the western United States that were subjected to allotment, the tribal lands of the Cherokee, Creek, Choctaw, Chickasaw and Seminole Nations were not allotted under the General Allotment Act. The reason for this is that, unlike other reservations where legal title was held by the United States in trust for the Indian tribe, title to the

to millions of acres of land in the Indian Territory to the Indian Nation.

For this reason—the way in which title to our tribal lands was held at the time of allotment—the General Allotment Act simply would not work for the allotment of tribal lands in

the Indian Territory. After the Commission to the Five Civilized Tribes attempted unsuccessfully to negotiate with the governments of the Five Nations for a consensual allotment of their tribal lands, Congress passed the Curtis Act of 1898, which threatened the Nations with forcible allotment of their lands under very unfavorable terms if they did not cooperate with the Government. Within four years after the passage of the Curtis Act, the United States succeeded in negotiating the "allotment agreements" with the Indian Nations that it had been attempting to get for several years. These agreements, though long and complex and reading much like treaties, were incorporated by reference into special statutes enacted by Congress in the first few years of the 20th Century. Each required the Indian Nation to allot its own lands, under specified terms and conditions, by way of allotment deeds signed by the Principal Chief. Rather than receiving trust allotments from the United States as did individual Indians of other tribes whose lands were allotted, the allottees of the Five Nations received fee title to their allotments, subject to federal restrictions against alienation. To this day the Indians who have inherited restricted Indian allotments issued by the Five Nations hold fee title to their land subject to restrictions against alienation imposed by the laws of the United States.

Beginning in 1906 and continuing for several decades after Oklahoma's subsequent admission into the Union, Congress passed numerous special laws that targeted the restricted allotments of the Five Nations. Many of those laws, through one mechanism or another, had the effect of removing the federal protections from restricted Indian lands. Some of these laws placed high Indian blood quantum requirements as a condition of maintaining restricted status, with the consequence that many tracts of land quickly lost their protections by operation of law. Another law made the restricted lands of the members of the Five Nations subject to the statutes of limitation of the state of Oklahoma; this made all restricted lands vulnerable to the law of adverse possession. Yet another made all restricted lands owned by an Indian in excess of 160 acres subject to the state ad valorem taxation. These lands, then, could be sold for unpaid taxes. Still another made restricted lands subject to involuntary partition in state court, enabling any interest owner, no matter how small his or her interest, to force the sale of the land often for as little as 2/3 of the land's appraised value. All of these and many other federal laws chipped away at the protections against alienation that were originally contemplated at the time of allotment, rendering these the most vulnerable, least protected lands in all of Indian Country. The total restricted land base in eastern Oklahoma is only a tiny fraction of what it was 98 years ago immediately following allotment.

Over the decades following statehood, local Indian community leaders made efforts to understand and reform the federal laws that were eroding the federal protections against alienation and separating the Indians from their lands, but they met with little or no success. Then, in the 1980's, a lawsuit was filed against the United States by a member of the Creek Nation—*Walker v. United States*, 663 F.Supp. 258 (E.D. Okla. 1987)—whose restricted minerals had been produced under a fraudulent oil and gas lease approved in state court. Mr. Walker's case brought to the attention of the courts, the federal officials who were responsible for protecting restricted land in eastern Oklahoma, tribal leaders and attorneys the fact that the system of federal laws applicable to the restricted allotments of the Five Nations was not working. The Walker lawsuit, the complex legal history of individual Indian land tenure in eastern Oklahoma, and the deficiencies in the federal system that have been inflicted upon Indian landowners since the allotment period are the subject of a 1989 law review article that I urge the members of this Committee to read, *"Fatally Flawed": State Court Approval of Conveyances by Indians of the Five Civilized Tribes—Time for Legislative Reform*, by Timothy Vollmann and Sharon Blackwell, 25 Tulsa L.J. (1989).

After the revelations of the Walker case, tribal leaders, attorneys and realty officers created a work group that met with local Interior officials and attorneys in the Tulsa Field Solicitor's office on a regular basis and began crafting proposed legislation for the reform of laws applicable to restricted lands. After five or six years of work on this project, the Executive Committee of the Inter-Tribal Council of the Five Civilized Tribes approved the first draft of the proposed bill. That was in late 1995. In 1996, the Executive Committee designated Principal Chief Beaver as the primary lead in moving the initiative forward. It was introduced in the House of Representatives as HR 5308 in September of 2000 and passed by the House on October 17, 2000. That same year, in October, the bill was introduced into the Senate by Senator Inhofe in the form of S. 3182. Neither bill became law in the 106th Congress, but a revised version was introduced by Congressman Wes Watkins in September of 2001. With amendments recommended by the House Resources Committee, on June 11, 2002, the House passed the bill that now stands before this Committee.

One point I would like to make before addressing the objectives and content of HR 2880 is that this bill is the product of considerable work and input from many different perspectives,

parties and interests. Our lawyers and realty staff, of course, have had considerable input. But they have worked with members of the Oklahoma Bar Association, the regional and central office personnel of the Bureau of Indian Affairs, staff and attorneys with the House Resources Committee, House Legislative Counsel and the staff of this Committee, for which we are very grateful. As a result, the bill reflects a careful balancing of interests, Indian, non-Indian, federal and local. It is a well-crafted piece of legislation that will benefit Indian country in eastern Oklahoma.

II. Objectives of Reform Initiative and HR 2880.

Current federal Indian policy as applied to restricted lands in eastern Oklahoma has several *systemic* flaws. For example, many of these laws are not codified. Indeed, one such uncodified law, the single most comprehensive federal statute applicable to restricted lands, is the Act of August 4, 1947, 61 Stat. 733, commonly referred to as the "1947 Act" or the "Stigler Act." The fact that this and other federal laws are not codified in title 25 of the United States Code has made it exceedingly difficult for practicing lawyers in Oklahoma *to find and correctly apply* the law in real estate transactions involving restricted lands. One objective of this legislation is to *create a single, comprehensive legislative scheme*, embodied in a single law, applicable to restricted lands in eastern Oklahoma.

Another problem with the laws applicable to restricted lands is that many of them are poorly drafted, ambiguous or do not adequately address issues inherent to the ownership of the land. Therefore, another objective of HR 2880 is to *clarify the law*.

The special laws applicable to restricted Indian land in eastern Oklahoma are, in most respects, altogether different from those applicable to trust allotments elsewhere in Oklahoma and the rest of the United States. From the perspective of the individual Indian, these differences are manifestly *unfair*. To probate estates containing restricted land, the Indian family must hire a lawyer themselves, using their own funds, and file a probate action in state court—something that many such families cannot afford—with the result that much restricted land goes unprobated. Only restricted land is vulnerable to loss by adverse possession; trust allotments are not at risk of loss by this legal device. Similarly, only restricted land is vulnerable to involuntary partition in state court. By this mechanism anyone owning a small fractional interest in the

property can force its sale with an action in state court, and buy it at auction for a little as 2/3 of the appraised value. The costs of the action and sale and the attorneys fees are deducted from the proceeds of sale *before* they are distributed to the landowners. Therefore, another significant objective of HR 2880 is to *bring equity to the level of protection that is afforded restricted allotments of the Five Nations*, to give it, to the extent possible, the same protection that is afforded trust allotments while at the same time giving the Indian landowners flexibility in the use and disposition of their lands.

Cherokee Nation has performed functions relating to restricted land transactions for several years pursuant to contracts and compacts under PL 93-638. Based on that experience, which requires regular interaction with the Eastern Oklahoma Regional Office, we also know how the peculiar system of laws applicable to restricted land places a burden on the Department of Interior in its efforts to manage and administer the land. Because of the peculiar laws applicable to these lands, the Department must operate a completely separate and distinct administrative system and set of rules, apart from those applicable to trust allotments elsewhere in Oklahoma and the United States. Also, even in eastern Oklahoma, the Bureau of Indian Affairs has trust responsibility over trust lands that have been acquired by the United States over the years for the benefit of individual Indians pursuant to the Indian Reorganization Act of 1934 and the Oklahoma Indian Welfare Act of 1936. Unlike *restricted* allotments, these individual Indian *acquired* trust lands must be administered by the BIA under laws and regulations generally applicable to individual Indian *trust* lands. Accordingly, yet another important objective of HR 2880 is to return jurisdiction over probates, conveyances, mineral leasing and most other transactions involving restricted lands to the Secretary of Interior *so that restricted land can be administered under a system of laws and regulations that is a similar as possible to the system used for individual Indian trust lands in order to achieve administrative consistency and efficiency.*

III. Overview of certain defined terms and provisions in Titles I and II of HR 2880.

Senators Inouye and Campbell and other members of the Committee, before we came here this week, Chief Beaver of the Muscogee Nation and I agreed that I would cover certain provisions in HR 2880 in my testimony and Chief Beaver would address others in his oral and written testimony. I do not want to burden the Committee or the record with a hyper-technical,

section-by-section legal analysis of the bill, but I would like to highlight a few features of two of the bill's defined terms and of certain sections in Title I and Title II of HR 2880.

As for the defined terms, I would first point out to the Committee that the term "Individual Indian" is defined in such a way that, for purposes of this bill, it will include any person who is an enrollee or a lineal descendant of an enrollee whose name appears on the original Dawes Rolls of the Five Nations—the rolls that were used in the allotment of the Nations' tribal lands. In other words, it is not necessary that the owner of restricted land actually be an enrolled member of one of the Five Nations in order for the land to maintain its restricted status. This is important for many reasons, including the fact that ownership an interest in restricted land may pass by operation of law to an Individual Indian upon the death of his or her parent, and it is conceivable that the Indian inheriting the interest is an unenrolled infant child. It is also conceivable that the Individual Indian is a member of some tribe other than one of the Five Nations and that tribe prohibits dual enrollment. The term is defined in such a way that in either instance, the property will remain in restricted status notwithstanding the fact that the owner may not be actually enrolled as a member of one of the Five Nations at the time of inheritance.

Another important term is "restricted property," which is defined to include "any interest in real property owned by an Individual Indian that is subject to a restriction against alienation... imposed by this Act and other laws of the United States expressly applicable to the property of enrollees and lineal descendants of enrollees" on the original Dawes Rolls. This term, when read together with section 101 of the bill, means that the Act will pertain only to land that was still in restricted status as of the effective date of the Act and land that *becomes* restricted property by operation of some provision of the Act—say, for example, land that is acquired pursuant to section 102 with funds from the sale of restricted property, when the Indian owner decides he or she wants replacement land held in restricted status. In short, it is important to understand that a tract of real property that is not otherwise in restricted status will *not* automatically become "restricted property" upon adoption of this Act simply because it happens to be owned by an Individual Indian.

Title I of HR 2880 deals with the imposition and removal of restrictions against

alienation. Section 101(a) makes it clear that the "restrictions" the Act speaks of are restrictions against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances. Section 101(b) provides that when an Individual Indian conveys restricted property to another Individual Indian, the restrictions will continue with the conveyed property *unless* there are proceeds resulting from the conveyance *and* the grantor desires to use those proceeds to acquire replacement property in restricted status pursuant to section 102. This means that, in cases involving a conveyance from one Individual Indian to another Individual Indian, (1) it will be up to the Indian who is *selling* the original property to choose whether that property or the replacement property will be held in restricted status, and (2), in either case, whichever choice he or she makes, the bill assures that *both* the original property and the replacement property will *not* be held in restricted status, which would otherwise gradually expand the restricted land base.

Section 104 repeats in this Act what prior laws have already provided—that the restrictions against alienation on restricted property are continued "until an act of Congress determines otherwise."

Second 105 restates with new and clarifying language what is more or less current law applicable to restricted Indian land, by providing a mechanism for removal of restrictions on property upon application by the Indian landowner. This section sets out a simple administrative procedure to be followed if the Indian landowner would prefer to have the restrictions removed from the property and the standards applicable to Secretarial action on the request. This section is consistent with the policy behind HR 2880 of affording Indian landowners with flexibility in dealing with their land.

Title II of HR 2880 governs administrative approval of conveyances, administrative partitions, leases and mortgages of restricted land and the management of restricted mineral interests. Section 201 clearly lodges jurisdiction over these actions and functions in the Secretary of Interior. Again, I would point out to the Committee that the Bureau of Indian Affairs already performs many of these activities under current law under certain circumstances. For example, the BIA in eastern Oklahoma, and not the state court system, has jurisdiction over the appraisal and approval of surface leases, easements and rights-of-way involving restricted property, and it has exclusive approval authority over so-called "Departmental leases" of restricted minerals—oil and gas leases executed by original allottees. The Bureau also has exclusive approval authority

over these transactions, including mineral leasing, involving individual Indian trust lands acquired under the IRA and OIWA. I mention this because the activities and responsibilities brought to the Eastern Oklahoma Regional Office by HR 2880 will not be not be altogether new or unfamiliar to the officials working in the Realty Department of that Office.

Section 203 of HR 2880 deserves some mention. For several years Indian housing authorities in eastern Oklahoma conducted the HUD Mutual Help Home Program over the years prior to the enactment of the Native American Housing Assistance and Self Determination Act of 1996. Under that program, the housing authorities would loan the Indian homebuyer moneys to build a home, often on restricted land. Instead of taking out a conventional mortgage on the property to secure the loan, the Indian housing authorities would require Indian homebuyers to obtain court-approved conveyances to the housing authority of a small portion, usually about one acre, of a larger tract of restricted property, whereupon the Indian housing authority would construct the mutual help home on the tract and lease it back to the original Indian landowner under a long-term contract. As a result of this procedure, a small portion of unrestricted property would be carved out of a larger restricted tract, which creates difficult jurisdictional problems and uncertainty for Indian and non-Indian law enforcement and any other agency for which land status is an important issue. What this section does is provide an efficient mechanism a for returning the small tract back to restricted status after the homebuyer's contract has been paid in full.

Although section 304 of HR 2880 authorizes *involuntary* partition of restricted property in the state court system, with certain limitations, the bill would also allow for the *consensual* partition of restricted property in kind by the Secretary in an administrative process described in section 204(c), in cases where there is agreement among all of the owners of undivided interests in a tract. This section also sets out an administrative procedure for the partition of individual Indian trust property provided that the owner or owners of more than 50 % of the undivided interests consent to the partition of the property.

Sections 206 and 207 of HR 2880 will bring some important changes to the way mineral leases are approved and managed after the effective date of the Act. First, however, it is important to understand that operative provisions of these two sections will *not* apply to mineral

leases approved by the state district courts *prior* to the effective date of the Act. *See* section 206(a) and 207(b)(1). Under the procedures described in section 206, the Secretary, rather than the state district courts, will have approval authority with respect to mineral leases executed or renewed *after the effective date of the act.* Subsection (2)(A) of this section, which is patterned after legislation applicable to the Fort Berthold Indian Reservation that was recently amended to include certain trust allotments in western Oklahoma, will not require consent of 100% of the owners of the undivided restricted or trust mineral interest; the Secretary will have authority to approve a mineral lease if the owners of a majority of the interests consent to the lease and the other requirements of the section are met. Section 207 provides that the royalties from mineral leases approved by the Secretary pursuant to section 206 will be managed in accordance with the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702, *et seq.*). I would emphasize again that royalties produced from mineral leases approved by the district courts of Oklahoma *before* the effective date of HR 2880 would not be covered by this section.

III. Conclusion.

I thank the Committee again for the opportunity to present written and oral testimony in support of HR 2880. It is a bill that brings much needed equity and fairness to the owners of restricted allotments of the Five Nations, while at the same time preserving vested rights held by Indian and non-Indian landowners. I urge the Committee to recommend HR 2880 favorably to the full Senate so that it will be signed into law in the 107th Congress.

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