



Testimony of Chairman Ryman LeBeau
Cheyenne River Sioux Tribe
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Before

House Committee on Natural Resources,
Subcommittee on Indian and Insular Affairs
1324 Longworth House Building
United States Congress

On

Oversight Hearing: *“Examining the Opportunities and
Challenges of Land Consolidation in Indian Country.”*

Testimony of Chairman Ryman LeBeau, Cheyenne River Sioux Tribe of the Cheyenne River Reservation

Anpetu waste, Hau Kola. Good Morning Friends. Chair Hageman, and Members of the Committee, Greetings from the Cheyenne River Sioux Tribe. My name is Ryman LeBeau and I serve as Chairman of the Cheyenne River Sioux Tribe.

The Cheyenne River Reservation is composed of 2.8 Million acres of high prairie grassland, interspersed with a few ridges of farmland along the Cheyenne, Moreau and Missouri Rivers. We are the Lakota People of the Three Rivers. Our land is Buffalo Country, and we also raise horses and cattle. Because an animal unit for grazing is 28 acres, we allocated our Range Units in 1,000 or 2,000 acre lease units, with our tribal members receiving allocations for grazing. That provides a living for approximately 600 to 700 families. At Cheyenne River, we also have tribal government and retail jobs, but we have 26,400 people, so our unemployment ranges up to 85% in the winter.

At Cheyenne River, under the Buy Back Program, the BIA spent \$90 Million for almost 35,000 fractionated interests and the equivalent of 300,000 acres. Our Tribal Members received a large part of the payment for the land. So, the program was a strong effort, yet there is much left to be done.

Lakota Belief

In our belief, Tunkasila, Wakan Tanka, Grandfather, the Creator gave the first woman and first man the breath of life at Wind Cave in the Black Hills. Together with life, Tunkasila blessed us with liberty and a sacred duty to care for Unci Maka, Grandmother Earth. Our is the original land of our Lakota Oyate, prior to America.

1868 Great Sioux Nation Treaty

Our 1868 Great Sioux Nation Treaty recognizes 44 million acres of unceded Great Sioux Nation Indian territory and hunting lands in North Dakota, Montana, Wyoming, Nebraska, Kansas and Colorado, and over 27 million acres of Great Sioux Reservation—our “permanent home”—in North Dakota, Nebraska, and South Dakota, with our boundary at the low water mark on the east bank of the Missouri River and including our existing reservations east of the Missouri.

1877 Taking Act: Black Hills

In 1876, President Grant decided to stop defending the Great Sioux Reservation and to force the Great Sioux Nation to cede the Black Hills, our unceded Indian territory and hunting lands. After our defense of our 1876 Lakota-Nakota-Dakota People at the Battle of the Little Big Horn, Congress enacted the 1877 Act taking the Black Hills and our unceded and hunting lands. In 1980, the Supreme Court held that the Act taking the Black Hills and our other lands was unconstitutional because the Act violated the 5th Amendment and violated the 1868 Treaty. *United States v. Sioux Nation*, 448 U.S. 371 (1980).

Act of March 2, 1889: Division of the Great Sioux Reservation

In advance of North Dakota and South Dakota statehood in 1889, Congress divided the Great Sioux Reservation into six separate reservations, including the Cheyenne River Reservation, and further declaring 9.5 million acres of land in central and western South Dakota in between the new reduced reservations.

The 1868 Great Sioux Nation Treaty and the 1889 so-called Sioux Agreement

Our 1868 Great Sioux Nation Treaty and the 1889 Agreement authorized allotment of reservation lands to Lakota tribal members on the Cheyenne River Reservation and the BIA started to allot lands on the reservation.

1908 Surplus Land Act

In *Solem v. Bartlett*, 465 U.S. 463 (1983), the Supreme Court explained America's Allotment Process:

On May 29, 1908, Congress authorized the Secretary of the Interior to open 1.6 million acres of the Cheyenne River Sioux Reservation for homesteading. Act of May 29, 1908, ch. 218, 35 Stat. 460 *et seq.* (Act or Cheyenne River Act)... In the latter half of the 19th century, large sections of the Western States and Territories were set aside for Indian reservations. Towards the end of the century, however, Congress increasingly adhered to the view that the Indian tribes should abandon their nomadic lives on the communal reservations and settle into an agrarian economy on privately owned parcels of land. This shift was fueled in part by the belief that individualized farming would speed the Indians' assimilation into American society and in part by the continuing demand for new lands for the waves of homesteaders moving west. As a result of these combined pressures, Congress passed a series of surplus land Acts at the turn of the century to force Indians onto individual allotments carved out of reservations and to open up unallotted lands for non-Indian settlement. Initially, Congress legislated its Indian allotment program on a national scale, but by the time of the Act of May 29, 1908, Congress was dealing with the surplus land question on a reservation-by-reservation basis, with each surplus land Act employing its own statutory language, the product of a unique set of tribal negotiation and legislative compromise....

[T]he Act strongly suggest that the unallotted opened lands would, for the immediate future, remain an integral part of the Cheyenne River Reservation. In § 1 of the Act, the Secretary was authorized to set aside portions of the opened lands "for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians."... Most of the members of the Tribe obtained individual allotments on the lands opened by the Act.

As a result of the Allotment Policy and the Cheyenne River Act, the Cheyenne River Sioux Tribe retains approximately 900,000 acres of Tribal Trust Lands and roughly 600,000 acres of Allotted Indian Trust Lands.

Fractionated Lands and the Land Buy Back Program

The Indian Land Tenure Foundation explains the problem of fractionated lands as follows:

For over a century, Indian families have seen valuable land resources diminish as fractionated ownership increases with each passing generation. As a result of the General Allotment Act of 1887 (also called the Dawes Act), reservation land was divided up and allotted to individual tribal members. When an allottee died, title ownership was divided up among all of the heirs, but the land itself was not physically divided. As such, each Indian heir received an undivided interest in the land. Now, as each generation passes on, the number of owners grows exponentially, which has resulted in the highly fractionated ownership of much Indian land today.

Parcels with fractionated ownership can have hundreds or even thousands of owners. With so many owners, individual income from the land is minimal – sometimes less than what it costs the federal government to process the payment. In addition, land use is compromised because an undivided interest owner must gain consent from a majority of the parcel’s owners to do anything with the land. This makes it nearly impossible for any one of the owners to use the land for agriculture, business development or a home site, all uses that would improve quality of life for Indian people.

On its website, the BIA explains the Land Buy Back Program as follows:

The Land Buy-Back Program for Tribal Nations (Buy-Back Program or the Program) implemented the land consolidation component of the *Cobell v Salazar* Settlement Agreement which provided a \$1.9 billion Trust Land Consolidation Fund (Fund) to purchase fractional interests in trust or restricted land from willing sellers at fair market value. Consolidated interests were immediately restored to Tribal trust ownership for uses benefiting the reservation community and Tribal members.

The Program was established in December 2012 and the 10-year period for its implementation of land consolidation efforts came to an end November 24, 2022.

In 2015, at the outset of the program, Mike Connor, the Deputy Secretary of Interior described the Buy Back Program and our initial Cheyenne River Sioux Tribe Buy Back agreement:

The agreements with the Cheyenne River Sioux Tribe of the Cheyenne River Reservation in South Dakota and the Prairie Band Potawatomi Nation in Kansas detail what each tribal government will do to help implement the Buy-Back Program and provide resources to facilitate outreach and education. The Department has thus far entered into cooperative or other agreements with nearly 20 sovereign tribal nations.

“We continue to be encouraged by the growing momentum and excitement about the Buy-Back Program across Indian Country,” said Deputy Secretary Connor. “As we have made clear, a significant factor in the Program's success is the ability to work effectively with tribal leadership to best tailor outreach and information to their community. Working closely with the Cheyenne River Sioux Tribe and the Prairie Band Potawatomi Nation, we can maximize our ability to provide landowners with the information they need to make informed decisions about their land through this voluntary program.”

Land fractionation is a serious problem across Indian Country. As lands are passed down through generations, they gain more owners. Many tracts now have hundreds and even thousands of individual owners. Because it is difficult to gain landowner consensus, the lands often lie idle and cannot be used for any beneficial purpose. There are more than 245,000 owners of three million fractionated interests, spanning approximately 150 Indian reservations, who are eligible to participate in the Buy-Back Program.

The Buy-Back Program was created to implement the land consolidation component of the Cobell Settlement, which provided \$1.9 billion to consolidate fractional land interests across Indian Country. It allows interested individual owners to receive payments for voluntarily selling their land. Consolidated interests are immediately transferred to tribal governments and stay in trust for uses benefiting the tribes and their members.

Administration Proposal—AS-IA Bryan Newland May 2023 Appropriation Testimony:

The Biden Administration proposes continuity for the Indian Land Consolidation Program in AS-IA Bryan Newland’s FY 2024 BIA Request:

BIA requests \$30.5 million, a \$22.5 million increase above 2023 enacted, for the Indian Land Consolidation Program (ILCP), which purchases fractional interests from willing individual Indian landowners and conveys those interests to the Tribe with jurisdiction. ILCP funding recognizes the ongoing need to continue to address fractionation on Indian lands while also focusing support on Tribes’ plans for and adaptation to climate change. This program is especially important since the Land Buy-Back Program for Tribal Nations (LBBP), established as part of the Cobell Settlement, ended in November 2022. The ICLP has incorporated lessons learned from the LBBP and the previous ILCP in BIA to ensure effective program implementation.

Cheyenne River Sioux Tribe Proposed Solutions

The Cheyenne River Sioux Tribe supports the Administration’s Request for FY 2024 Funding for \$30.5 million for the Indian Land Consolidation Program (ILCP).

- **Additional Funding: \$400 Million for Reservation Fee Land**

In the early 1900s, Congress believed that Indian Reservation lands were in excess of the needs of Indian nations. That was not true for the Cheyenne River Sioux Tribe and the Cheyenne River Reservation. Indeed, in the 1950s, America called upon the Cheyenne River Sioux Tribe to once

again sacrifice, this time 104,000 acres of our best Missouri River bottom land taken for Flood Control downstream on the Missouri River. In building the dam that created Lake Oahe, significant lands were flooded that stripped the Reservation of our great oak trees, corn production, the best flood plain farming lands and residential lands on the Reservation.

Economic development is a serious challenge for the Cheyenne River Sioux Tribe. Unemployment is 85% in the winter months, with winter temperatures reaching below -20 degrees Fahrenheit, and with wind chill, temperatures feel as low as -50 degrees Fahrenheit. In the summer, unemployment exceeds 75%. The extreme unemployment on the Cheyenne River Reservation leads to a myriad of social economic problems including low educational attainment, drug and alcohol abuse, violent crime, family dislocation and high teenage pregnancy, depression and suicide, among other things.

Ziebach County was the very poorest county in America in the 2010 Census, based on per capita income. Ziebach County is the fourth poorest county in America in the 2020 Census: 47.91% poverty rate, 1,100 people in poverty, and 2,296 population, according to the World Population Review, visited on January 1, 2024. Dewey County is the 18th poorest county in America: 35.59% poverty rate, 1,858 people living in poverty, and 5,221 population. Our tribal records, with 26,400 tribal members, indicate that the Census represents a severe undercount of our tribal population with thousands more of our Lakota People living in poverty.

We need additional lands in order to produce more value added Agriculture. Recently, the Cheyenne River Buffalo Corporation applied for funding for a USDA Grant for Buffalo Processing and Senator Thune wrote a letter to support value added Agriculture:

As a long-time proponent for agriculture as a means to strengthen rural economies, I write.... As you know, producers have faced significant market disruptions for several years. The largest meatpackers in the country have seen record margins, while local ranchers and farmers have struggled just to make ends meet. While I will continue to pursue legislative and regulatory policies to address issues impacting the livestock industry, I am wholly pleased to advocate on behalf of entities seeking to expand small meat processing capacity.

The CRST Buffalo Authority Corporation is an independent, tribally-owned and chartered organization, whose primary mission is to promote and develop a sustainable buffalo herd for the benefit of the Cheyenne River Sioux Tribe, our state, and the American public. With the largest tribally-owned herd in the nation and through a value-added approach to managing their nearly 2000 head of buffalo, the corporation currently utilizes a small meat processing facility located in Mobridge, South Dakota. Should they receive funding, the CRST Buffalo Authority Corporation plans to construct a new, state-of-the-art buffalo processing facility.... South Dakota's producers work hard to raise high-quality livestock, and we need to invest in expanded processing capacity to help create more market opportunities and meet consumer demand for their products.

The Cheyenne River Sioux Tribe needs the value added agriculture that Buffalo production and other livestock production represents because we need jobs for our Lakota people to make our Cheyenne River Reservation a livable home.

Through land consolidation purchases, the Cheyenne River Sioux Tribe must recover reservation fee lands for value added agriculture to feed and employ our Lakota people and Congress should help us. In Article III, the 1868 Treaty provides that the Great Sioux Reservation should have additional lands for tribal members:

If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than 160 acres of tillable land for each person who, at the time, may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity of arable land, adjoining to said reservation, or as near to the same as it can be obtained, as may be required to provide the necessary amount.

As anticipated by Article III of our 1868 Treaty, Indian Land Consolidation requires re-acquisition of large areas of fee land, especially in light of our Native American population growth. In 1980, the Cheyenne River Sioux Tribe's population was 12,500 and today our population is 26,400. Indian Land Consolidation should include \$400 Million for the purchase of Indian Lands on reservations, with large areas of fee lands, including the Cheyenne River Reservation with our 1.3 Million acres of fee lands.

- **Partition Fractionated Indian Trust Lands Upon Request**

Fractionation of Indian lands is especially a problem for economic development. Individual Indians may own a 5% undivided interest in a 160 acre parcel, which would be equivalent to 8 acres were the fractional interest. BIA typically requires all land owners to agree to partition (divide) Indian allotted lands, so the native land owner cannot partition his undivided land interests to use their 8 acres for a home-site without a huge transactional effort. **BIA should amend its rules to allow an Indian trust land owner to partition his undivided interest in allotted Indian trust lands without that transactional effort.**

- **Native Nation Title: Restricted Fee Lands**

America recognized that our Native Sovereign Nations owned our Native lands, and sought title from us for American lands, as we reserved our permanent homelands by treaty, and settlers were forbidden from occupying Native lands while the United States protected our Native lands with Indian "trust title." While Indian trust title, that is the United States of America holding land in trust for Indian tribes, is a useful means to protect Indian lands from alienation, yet without more flexibility, Indian trust title can stifle economic development. The Secretary of the Interior recently re-issued updated Federal Indian trust regulations, 25 CFR Part 151, which provide for the recovery of Native lands in the name of the United States of America for the benefit of Native Sovereign Nations, yet do not allow for the recovery of Native home lands in restricted fee status in the name of our Native Nations.

We are asking Congress to enact legislation to further our nation-to-nation treaties and protect our Native Sovereign Nation homelands through provisions for:

- Issuance of Native Nation Restricted Fee Title to Protect Nation homelands with the status of Indian country, subject to the restriction that the land may not be alienated without consent of both the Native Nation title holder and the U.S. Congress;
- Affirmation that our Native Nation fee lands are under Native Nation self-government, including civil and criminal jurisdiction, with annexation to Native Nation reservations as the permanent home of our native peoples, and protection by Federal laws and treaties safeguarding Indian lands, including any and all protection for Indian trust lands and at the election of the Native Nation title holder, treatment as a Federal enclave;
- Pre-emption of state and local taxation, and pre-emption of state law or regulations that may interfere with Native Nation self-determination and self-government; and
- Provision for Tribal Government authority concerning value added agriculture, economic development, and governmental services, including housing, health care, education, and other tribal government activities, without secretarial sign-off.

In this way, Native Nation Title and restricted fee land can forward America's longstanding Indian Self-Determination Policy.

Conclusion

Fractionated interests are the result of America's colonial treatment of Indian lands. A more modern approach will move us past the fractionation problem by eliminating BIA's excessive red tape in the management of Indian allotted trust lands.