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Historical Background of Fractionated Ownership of Indian Trust Lands

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Presentation Topics

History of fractionation

Impact of Fractionation

Efforts to address Fractionation

AIPRA Provisions

Strategies to Reduce Fractionation

Legislative Options

Tribal Land Ownership Prior to Allotment

- Majority of Tribes were nomadic
- Individual property ownership was a foreign concept
- Initial treaties established boundaries between the U.S. and Tribal Nations
- Reservations were established to restrict movement of Tribes and settle them into permanent localities
- Majority of Reservation lands were owned communally by the Tribe
- Reservations were precursor to Allotments

General Allotment Act of 1887

- **Stated an authorized general policy to allot Tribal lands to individual Indians**
- **Specific acts implemented allotment after negotiation with affected tribes**
- **Intent was to assimilate Indians into dominant society – Indians to become self-sufficient farmers**
- **Individual ownership and use of Reservation lands was viewed as the best economic basis for assimilation**

General Provisions of Allotment

- **160 acres to each family head of household**
- **80 acres to every single person over age 18 and every orphan under age 18**
- **40 acres to every single person under age 18**
- **Deed issued to every allottee but held in trust for 25 years**

General Provisions, cont.

- After 25 years fee patents were to be issued to allottees
- Surplus lands were ceded to the government and most often opened up for non-Indian Settlement
- 1906 legislation allowed alienation before 25 years upon “competency of allottee” and also allowed fee patents upon death of allottee

Results of Allotment

- **Between 1887-1900--118 reservations were allotted; by 1934 - 219 reservations and/or Land Area Codes (LACs today) were allotted**
- **Between 1887 and 1900-US approved 53,168 allotments totaling 5 million acres**
- **By 1920-36 million acres had been allotted to individual Indians**

Loss of Allotted Lands

- **By 1934, approximately 27 million acres or 2/3 of allotted lands had passed by sale or involuntary transfers into non-Indian ownership**
 - **Approximately 11 million acres remained in individual Indian ownership**
 - **Resulted in checkerboard ownership status on many reservations**

Repudiation of Allotment Policy

- The 1928 'Meriam Report' found that the General Allotment Act had "failed to address society's need to reduce the dependency of the individual Indian on the federal government."
- The Indian Reorganization Act of 1934 prohibited any further allotment of Indian lands and
 - authorized trust status of remaining allotments to continue until Congress provided otherwise,
 - Authorized the Secretary of Interior to take lands into trust for tribes and tribal members

Fractionation

- **As early as 1892, Indian agents reported that after the death of the original allottee, title to the land was unclear**
- **No law existed to probate an Indian's estate if he died before expiration of the trust period until 1894 when State laws were applied to determine heirs**
- **Indians were unable to draft wills until 1910**

Fractionated Land Ownership today

- **Approximately 128,000 individual Indian allotments currently exist**
- **The average trust allotment has 17 owners but many have hundreds and one tract has 1800 owners**
- **Currently there are approximately 4 million fractionated interests**
- **Fractionated interests are expected to grow by 7 to 8% annually**

Impacts of Fractionation for Tribes and Individual Indians

- Highly fractionated lands restrict economic and social uses by owners;
- Fractionation results in lost opportunities for conservation and cultural preservation;
- Fractionation impacts access to trust lands;
- Fractionation limits governmental authority over lands

Impacts of Fractionation for DOI

- DOI entered into the leasing of fractionated lands to insure revenue, prevent trespass;
- Leasing function has expanded with growth of fractionated lands to the detriment of other necessary services to Tribes;
- DOI expends approximately \$432 million annually to manage fractionated interests of land
- DOI unable to sufficiently fund lease compliance, enforce trespass regulations

Impacts cont.

- One probate case costs approx. \$7,800 and approx. 3,500 landowners die annually – resulting in approx \$27 million annually for probates
- Probate backlog delays recording current ownership data and hinders acquisition of fractionated interests
- DOI has developed new programs to respond to managing fractionated interests at a significant cost including records management, sophisticated title systems, beneficiary services

Previous Attempts to Address Fractionation

- IRA contained unfunded provision for tribes to consolidate fractionated lands,
- IRA authorized the exchange of heirship lands,
- A 1948 amendment to the IRA allowed sales of fractionated lands

Efforts, Cont.

- **Indian Land Consolidation Act of 1983 – included provision for interests less than 2% of a tract to escheat to the Tribe.**
 - US Supreme Court found this provision an unconstitutional taking
- **2000 Amendments to ILCA repealed escheatment and restricted devises of trust land but before implementation, Congress adopted**
- **The American Indian Probate Reform Act in 2004**

AIPRA (P.L. 108-374)

Intent--Congress declared its commitment, in Section 102, to solve fractionation and stated its policy to:

- 1) Prevent further fractionation of trust allotments made to Indians;**
- 2) Consolidate fractional interests and ownership of those interests into usable parcels;**

AIPRA (P.L. 108-374)

- 3) Consolidate fractionated interests in a manner that enhances tribal sovereignty;
- 4) Promote tribal self sufficiency and self-determination;
and
- 5) Reverse the effects of the allotment policy on Indian Tribes.

AIPRA cont.

Three Purposes

1. Preserve trust status and tribal jurisdiction
 - a. federal probate code restricts transfer to fee status
 - b. restricts transfer to non-Indians

2. Attacks fractionation
 - a. Establishes single heir rule

AIPRA cont.

b. Earmarks federal funds for land consolidation via Indian Land Consolidation Program (ILCP)

c. Authorizes tribal tract consolidation (50% ownership)

d. Competitive sale by application of any one owner

AIPRA cont.

3. Empowers tribes and individual land owners
 - a. Streamlines trust-to-trust and fee-to-trust Consolidation
 - b. Encourages negotiated land use and land consolidation agreements at probate
 - c. Authorizes “Owner Management” of agriculture land

AIPRA cont.

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AIPRA cont.

25 USC Chapter 24 Indians

- **Section 2203 (Adoption of Land Consolidation Plan)**
- **Section 2204 (a) (Tribal purchase authority @ FMV)**
- **Section 2204 (d)(2) (K) (Secretary may purchase when there is a Lack of bids)**
- **Section 2206 (p) (5) (Descent & Distribution)
Referenced in S. 2212 (a) (1) (Purchase at Probate)**

Indian Land Consolidation Program (ILCP)

- **1999--BIA Pilot Program to consolidate fractionated lands on 3 WI Reservations—Bad River, Lac Courte Oreilles, Lac du Flambeau**
- **2004 amendments to ILCA (AIPR)--the Pilot Project became a permanent program--25 USC Chapter 24 Indians Sect 2212-2215**

ILCP cont.

- **2003--Indian Land Consolidation Center established by 130 DM Part 3**
- **The ILCP expanded to 20 Reservations by the end of FY 2005--Number 1 priority in DOI**

Strategies to Reduce Fractionation.

- Engage Tribal representatives in on-going Development of any alternative – insure Tribal control of implemented strategies
- Educate and assist Tribes and individuals to utilize available tools in AIPRA
- Seek Congressional funding for estate planning for individual Indians including will storage

Strategies, cont.

- **Consider ILCP experiences and lessons learned in developing new alternatives.**
- **Endorse a plan that includes a model to forecast costs and benefits associated with implementing a project on targeted reservations.**
- **Work with Congress to insure that the financial burden to purchase fractionated interests remains with the United States and does not become a tribal responsibility.**

Considerations for a Purchase Program

- **Establish purchase criteria based on benefits to the Tribe including**
 - **Geographic location**
 - **Economic development opportunities**
 - **Land Values**
 - **Appraisal Costs**

Purchase Program Considerations.

- Review reservation-wide land values for use in land valuation process
- Identify tracts that have potential or are actually income producing, i.e. for economic, residential, agricultural & cultural uses
- Assist Tribes with developing Reservation Land Use Plans to incorporate in a Purchase Program

Purchase Program considerations, cont.

- **Assure that fair market value is offered to sellers and create incentives to purchase small interests that have minimal value**
- **Establish maximum period for the repayment of purchase price**
- **Grant tribal access to TAAMS Title as a prerequisite to participation in a purchase program**

Legislative Options

New legislation:

- **Should not automatically place a lien on each interest purchased by DOI. DOI should have flexibility to negotiate with Tribe on lien status**
- **Should include financing for individuals to purchase interests of co-owners**
- **Should establish a minimum value for lands or allow purchase for a “reasonable purchase price” to avoid full appraisals for every interest**
- **Allow purchase of 1/1 whole tracts**
- **Allow purchase of fee interests**

Legislative Options, cont.

- **Should address the sale of very small-fractionated interests where the seller is unwilling or is a Whereabouts Unknown**
- **Should provide an Unclaimed Property Act to consolidate WAU interests**
- **Should authorize Secretary to implement involuntary purchase on behalf of a majority owner in a tract and possibly for tracts with over certain number of owners or under a certain percentage of the tract**
- **Should allow Tribes to 638 Contract or Compact any land acquisition program**