Statement of The Honorable John Williams
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United Auburn Indian Community

Before the Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives

Hearing on H.R. 1532

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Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee, my name is John Williams, and I am the Tribal Vice Chairperson of the United Auburn Indian Community ("United Auburn" or "Tribe"). Joining me today from our Tribal Council are Tribal Secretary Gabe Cayton and Council Member Leonard Osorio.

United Auburn is a separate band of Maidu and Miwok Indians, who originally occupied a village on the outskirts of the City of Auburn, California. In 1917, the United States acquired land in trust for the Auburn Band near the City of Auburn and formally established a reservation, known as the Auburn Rancheria. Tribal members continued to live on the reservation as a community despite great adversity.

In 1958, the United States enacted the Rancheria Acts, authorizing the termination of Federal trust responsibilities to a number of California Indian tribes, including the Auburn Band.[1] With the exception of a 2.8-acre parcel containing a tribal church and a park, the government sold the land comprising the Auburn Rancheria. The United States formally terminated Federal recognition of the Auburn Band in 1967.[2]

[1] California Rancheria Termination Act, Public Law 85-671 (Aug. 18, 1958).
[2] Auburn Rancheria in California, Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 32 Fed. Reg. 11,964 (Aug. 18, 1967).

In 1970, President Richard Nixon declared the policy of termination a failure. In 1976, both the United States Senate and House of Representatives expressly repudiated this policy in favor of a new Federal policy entitled Indian Self-Determination.

In 1991, surviving members of the Auburn Band reorganized their tribal government as the United Auburn Indian Community and requested that the United States restore their Federal recognition. In 1994, Congress passed the Auburn Indian Restoration Act, which restored the Tribe's Federal recognition and confirmed that United Auburn may acquire additional trust lands in Placer County.[3]

H.R. 1532 and the Indian Non-Intercourse Act

United Auburn is here today to express our strong support of H.R. 1532. As you know, this bill addresses a problem that Indian tribes can have when they try to lease, sell, or otherwise transfer real property that they hold in fee simple status. A very outdated statute, called the Indian Non-Intercourse Act ("Non-Intercourse Act"), prohibits Indian tribes from engaging in these types of real estate transactions without formal approval from either the Interior Department or the Congress.

H.R. 1532 would pre-empt the requirements of the Non-Intercourse Act and permit Federally recognized Indian tribes to lease, sell, convey warrant, or otherwise transfer real property they hold in fee simple status without the consent of the Federal government.

This is a somewhat complicated issue and let me provide the Subcommittee with background on this issue.

[3] Auburn Indian Restoration Act, Title II, Public Law 103-434 (Oct. 31, 1994).

The Non-Intercourse Act Problem

The Non-Intercourse Act comprises a series of laws enacted by Congress between 1790 and 1834. The Non-Intercourse Act is codified at 25 U.S.C. § 177, which states:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

The original purpose of the Act was to protect Indian tribes from losing their lands through disadvantageous real estate transactions, except by treaty, an act of Congress, or some other form of Federal consent.[4]

While Indian tribes may have needed this protection in the 18th and 19th centuries, much has changed in Indian Country since the early years of the United States. Tribal governments now have sophisticated electoral and governance processes, operate leading-edge enterprises, and use their resources to offer wide-ranging programs to benefit their members.

There is no longer any need for the Federal government to oversee or approve real estate transactions on parcels held in fee simple and located outside of an Indian tribe's reservation, rancheria, or trust lands. Individual tribal governments are in the best position to ensure the financial well-being of their tribes and their members.

Unfortunately, attempts to lease, sell, or otherwise transfer fee lands owned by an Indian tribe have run into challenges with title insurance companies. On a number of occasions, these companies have not been willing to write title insurance for the buyer of real property held in fee status by an Indian tribe, citing the Non-Intercourse Act. And the problem is widespread across the United States. According to our legal counsel, at least seven (7) of the largest title insurance

[4] *See, e.g., Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960) (stating that the original purpose of the Non-Intercourse Act was to "prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties" without Federal consent.).

companies are known to have policies against allowing Indian tribes to sell their fee lands without approval from the Interior Department.[5] Tribes facing this problem are then forced to request a lands opinion from the Interior Department, or persuade Congress to enact an exemption from the Act's restrictions.

The Role of the Interior Department

The Interior Department is a sympathetic partner to tribes facing this problem and has determined that fee lands owned by a tribe are not subject to the Non-Intercourse Act.

Solicitor's Opinion M-37023, issued in 2009, states the current legal position of the Department that "Federal restrictions under the Non-Intercourse Act do not automatically attach to off-reservation parcels acquired by a tribe in fee simple absolute."[6]

Solicitor's Opinion M-37023 also cited a 2008 letter from a senior Interior official to a tribal leader in Wisconsin regarding the status of fee lands located outside of reservation or trust lands. In this letter, the Department "agreed with the Tribe that off-reservation land[s] the Tribe acquired in 2000 which were never owned by the Tribe or its members in restricted status, and never held by the United States for the Tribe or its members in trust status were not subject to the Non-Intercourse Act and the Tribe was not required to obtain Federal approval to convey the property."[7]

Any tribe that is facing a Non-Intercourse Act problem with a real estate transaction involving lands outside of its reservation, rancheria, or trust lands can request that the Office of

[5] The seven (7) title companies known to have a Non-Intercourse Act policy are: Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, First American Title Insurance Company, Old Republic National Title Insurance Company, Stewart Title Guaranty Company, and Westcor Land Title Insurance Company.
[6] U.S. Department of the Interior, Office of the Solicitor, *Applicability of 25 U.S.C. § 2719 to Restricted Fee Lands*, at 6 (Jan. 18, 2009).
[7] *Id.* at 7, citing Letter from George Skibine, Acting Deputy Assistant Secretary—Policy and Economic Development, U.S. Department of the Interior, to Carl W. Edwards, President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Dec. 19, 2008).

the Solicitor issue a legal opinion that the specific lands at issue are not subject to the Non-Intercourse Act and are freely alienable.

United Auburn is going through this process today, as the Tribe is attempting to sell a public golf course on fee land that it purchased on the open market in 2012. After more than 10 years, the Tribe has determined, based on its business needs, that it no longer needs to own this property. The golf course is also located remotely from other United Auburn lands, more than 16 miles from our tribal headquarters and more than 5 miles from Thunder Valley, our casino resort located on trust lands.

The title company involved with this real estate transaction is unwilling to write a title insurance policy for the purchaser of this public golf course without a legal opinion from the Interior Department that the land is not subject to the Non-Intercourse Act. The issuance of such an opinion will allow United Auburn's sale to go through, but the Department should not have to allocate its limited resources to draft and issue these Non-Intercourse Act opinions. A legislative solution that cures this problem for all Federally recognized Indian tribes is far more preferable.

Legislation to Exempt Individual Tribes from the Non-Intercourse Act

Congress has already been active in this area, enacting legislation to exempt specific tribes from the restrictions in the Non-Intercourse Act and permitting these tribes to lease, sell, or otherwise transfer their fee lands. Specific examples include:

- A 2021 statute to authorize the Seminole Tribe of Florida to lease or transfer any real property that is not held in trust by the United States;[8]
- A 2018 statute, the Oregon Tribal Economic Development Act, to allow 7 tribes in Oregon to lease or transfer their fee lands;[9]

[8] Public Law No. 117-65 (Nov. 23, 2021).
[9] Public Law No. 115-179 (June 1, 2018).

- A 2016 statute to allow the Miami Tribe of Oklahoma to lease or transfer its fee lands;[10]
- A 2014 statute to allow the Fond du Lac Band of Lake Superior Chippewa in Minnesota to lease or transfer their fee lands;[11]
- A 2007 statute authorizing the Coquille Indian Tribe in Oregon to convey land and interests in land owned by the Tribe;[12]
- A 2007 statute authorizing the Saginaw Chippewa Tribe in Michigan to convey land and interests in land owned by the Tribe;[13] and
- A 2000 statute providing that fee land owned by the Lower Sioux Indian Community in Minnesota may be leased or transferred by the Community without further approval by the United States.[14]

Summary of H.R. 1532

Instead of adopting a tribe-specific approach to curing this problem, H.R. 1532 authorizes any Federally recognized Indian tribe to lease, sell, or otherwise transfer any fee lands that it owns without the consent of the Federal government.

A national approach to this issue will avoid the need for Congress to continue to pass legislation for individual tribes to exempt them from the Non-Intercourse Act. Additionally, the Interior Department will no longer need to respond to individual tribal requests for legal opinions confirming that real estate transactions involving fees lands are not subject to the Non-Intercourse Act.

[10] Public Law No. 114-127 (Feb. 29, 2016).
[11] Public Law No. 113-88 (Mar. 21, 2014).
[12] Public Law No. 110-75 (Aug. 13, 2007).
[13] Public Law No. 110-76 (Aug. 13, 2007).
[14] Public Law No. 106-217 (June 20, 2000).

Conclusion

For all these reasons, United Auburn strongly supports H.R. 1532 and urges the Members of the Committee on Natural Resources to support this legislation and vote it favorably out of Committee.

Thank you for the opportunity to present United Auburn's views on H.R. 1532. At the appropriate time, I am happy to answer any questions that Members of the Subcommittee may have.