



## THE AMERICAN INDIAN EMPOWERMENT ACT: AN OPTION TO RESTORE TRIBAL LAND OWNERSHIP AND FREEDOM FROM FEDERAL LAND REGULATION

October 25, 2017

- H.R. 215, the American Indian Empowerment Act, was introduced on January 3, 2017 by Chairman Emeritus Don Young (AK), of the House Resources Subcommittee on Indian, Insular, and Alaska Native Affairs. Here is a link to the bill:  
<https://www.congress.gov/115/bills/hr215/BILLS-115hr215ih.pdf>
- H.R. 215 is the same bill that was filed during the 113th and the 114th Congresses. A hearing on the bill was held on February 7, 2012. Here is a link to the hearing record:  
<http://donyoung.house.gov/news/documentsingle.aspx?DocumentID=278632>
- *What would H.R. 215 do if enacted?* H.R. 215 would allow any federally-recognized Indian nation or tribe the choice to convert any or all of their tribal trust lands into restricted fee lands. H.R. 215 would recognize the full authority of the tribal government to regulate its own land use, such as leasing and development. In other words, it would eliminate the authority of the Bureau of Indian Affairs to control tribal land use.
  - *H.R. 215 would allow a tribal nation to choose whether to regain title and ownership of its tribal lands and remove federal government control over tribal land use.*
- *What is restricted fee land?* Trust lands are considered owned by the United States government for the benefit and occupancy of a particular Indian tribe. Restricted fee lands are recognized as owned by the tribe itself, subject to a restriction against alienation imposed by federal law under 25 U.S.C. § 177; 25 C.F.R. § 151.2(e).
- *Are restricted fee lands Indian Country and the equivalent of trust land?* Yes. Both trust land and restricted fee lands constitute “Indian Country”, are subject to tribal and federal jurisdiction, and are immune from state regulation and taxation.
  - *See Citizens Against Casino Gambling in Erie County v. Hogen, (W.D.N.Y., Jul. 8, 2008) at 69 (“Congress has treated trust land and restricted fee land as jurisdictional equivalents in a number of Indian statutes of general applicability.”).*
- *Is restricted fee land more at risk of state jurisdiction, state taxation, or loss of tribal sovereignty?* No. Restricted fee land is Indian Country under federal law and is the equivalent of trust land for jurisdictional purposes.

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Henry Cagey, Senior Council Member at the Lummi Nation at [henryc@lummi-nsn.gov](mailto:henryc@lummi-nsn.gov) or (360)

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Randy Phelan, Vice Chairman of the Mandan, Hidatsa & Arikara Nation at

If you are interested in supporting H.R. 215, or have questions or comments, please contact:

- *If H.R. 215 is enacted, will it be mandatory on tribal governments? No.* The decision to convert and or all trust lands into restricted fee land status is a choice.
- *What would be the effect of H.R. 215 on Tribal Self-government and Economic Growth? H.R. 215 would empower tribal governments to lease and regulate their own lands and eliminate federal government restrictions that interfere with tribal economic development. It would not change any existing federal law relating to gaming development. But it would be an important step towards streamlining tribal land use for economic development beyond the HEARTH Act and thereby strengthen tribal sovereignty.*
- *Is there precedent for restricted fee land ownership in Indian Country? Yes, the Six Nations of the Haudenosaunee (Iroquois) located in New York State retain aboriginal title to their lands subject to 25 U.S.C. § 177 and are considered restricted fee lands under federal law. The U.S. government has no role in regulation of Six Nations lands use. Pueblos and Oklahoma tribes also have restricted fee lands, although the legal history differs.*
- *Would H.R. 215 affect trust allotments? No.* H.R. 215 does not affect allotments.
- *Would H.R. 215 Effect the federal government's funding obligation to tribes? No.* The federal trust responsibility and federal funding are issues independent of whether a tribe occupies trust land or owns restricted fee land. H.R. 215 expressly preserves the federal trust obligation.
- *In 1875, the Congress enacted legislation to recognize the full and complete authority of the Seneca Nation to lease its aboriginal lands without approval from the federal government. See Seneca Leasing Act of 1875, 18 Stat. 330.*
  - *See CACGEC, supra at 70 (“[W]here land is held in trust or is subject to a restriction against alienation imposed by law, a state is without jurisdiction over the land except as permitted by the federal government.”).*
- *If H.R. 215 is enacted, would it reflect a major change in federal law? No.* In 2012, the Congress enacted the HEARTH Act to amend the Long-Term Leasing Act of 1955, 25 U.S.C. § 415, to allow tribal governments to lease trust land for a 50-year period. See 25 C.F.R. Part 162. H.R. 215 would streamline this process even further.





# LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD · BELLINGHAM, WASHINGTON 98226 · (360)384-1489

DEPARTMENT \_\_\_\_\_

DIRECT NO. \_\_\_\_\_

**COMMENTS OF HENRY M. CAGEY,  
COUNCIL MEMBER OF THE LUMMI NATION  
ON  
H.R. 215, THE AMERICAN INDIAN EMPOWERMENT ACT**

Hearing before  
the House Committee on Natural Resources  
Subcommittee on Indian, Insular & Alaska Native Affairs  
October 25, 2017

Good afternoon Chairman LaMalfa, Ranking Member Torres, Chairman Young, and Subcommittee Members. My name is Henry Cagey. I am a senior Council Member of the Lummi Nation and a former Chairman. I am here representing the Lummi Nation, which serves as co-chair of the Tribal Economic Growth Alliance.

## BACKGROUND ON THE LUMMI NATION

The Lummi Nation is located in Northwest Washington State along the shores of the Salish Sea near Canada. Our territory is approximately 12,000 acres and most our 5,000 people live on or near our territory. We have survived for many generations as fishermen and we constitute the largest tribal commercial fishing fleet in Indian Country.

On January 22, 1855 at Point Elliott, our ancestors entered into a treaty with the United States that established peace between our two peoples and secured a portion of our traditionally occupied lands and waters. This treaty relationship serves as the basis for our modern government-to-government relationship.

In 1988, the Lummi Nation was one of the first 10 federally-recognized tribes that were part of the Indian Self-Governance Demonstration Project. This Project was dedicated to taking control of federal dollars allocated for our people and recognizing the authority of our tribal government to administer those dollars. The basic idea was to support local government control and decision making at the tribal level.

Self-governance is now permanent and there are over 250 tribes that are participating in the program. In my view, and many others, it is an unqualified success. We are now approaching the 30<sup>th</sup> anniversary and we must continue to build new ways to expand tribal self-governance.

H.R. 215 – the American Indian Empowerment Act – is an opportunity to expand tribal self-governance by regaining complete control over our tribal land use. For the Lummi Nation, this legislation should be supported because it is a continuation of federal policy over the last 30 years. Every tribe – at its choosing – should have the sovereign right to regain its land title and have full authority to enact laws to regulate its own land use.

#### WHAT WOULD THE AMERICAN INDIAN EMPOWERMENT ACT DO?

The American Indian Empowerment Act would allow a federally-recognized Indian nation or tribe – at its choosing – to convert all or a part of its existing tribal trust lands into restricted fee lands that it owns. It would preserve the status of those lands as Indian Country under the sovereign authority of the tribal and federal governments and outside the jurisdiction of the state and local governments. It would restore tribal government as the exclusive regulators of tribal lands. In other words, it would reduce the role of the Bureau of Indian Affairs to control our tribal land use.

#### WHAT IS THE DIFFERENCE BETWEEN TRUST LANDS AND RESTRICTED FEE LANDS?

Under federal law, Indian Country is defined to include both “trust lands” and “restricted fee lands.” Trust lands means that the United States holds title to the tribal land for the benefit of the tribe or individual Indians. In contrast, restricted fee lands are defined as lands where the tribe or an individual Indian holds title, but can only sell it or encumber it with the approval of the federal government pursuant to federal law.<sup>1</sup>

Trust lands and restricted fee lands are basically the same for purposes of jurisdiction types of lands.<sup>2</sup> Both types of tribal land are considered “Indian Country” under federal law.<sup>3</sup> Tribes, in the exercise of their sovereign authority, exercise primary authority over both types of lands.<sup>4</sup> The federal government, if need be, can also exercise authority over both types of lands. Most importantly, both trust lands and restricted fee lands are subject to the trust responsibility of the United States. This is to ensure that such lands are not sold or alienated without federal authorization, or become subject to state or local regulation and taxation. The federal law that protects restricted fee Indian title is the Non-Intercourse Act, which was originally enacted by the Congress in 1790.<sup>5</sup>

So, then, what is the difference between trust lands and restricted fee lands? Because trust lands are considered to be owned by the United States, such lands are subject to direct regulation by the BIA. Historically, this means that every decision relating to tribal land use is subject to BIA approval. This added layer of regulation and control is burdensome. It interferes with the sovereign authority of the tribal government to determine what is appropriate use of our own land.

Restricted fee lands are not considered owned by the United States and, thus, are not directly managed by the BIA. Instead, the tribal government is the exclusive manager of tribal

land use under our own tribal laws. This approach streamlines land use regulation and makes it easier to develop such things as housing or businesses.

Some have suggested that restricted fee land is more at risk of state jurisdiction, state taxation, or potential loss of tribal sovereignty. This is not my understanding, since restricted fee lands are no different than trust lands for purposes of jurisdiction.<sup>6</sup>

Restricted fee lands are not a new concept. Restricted fee Indian Country has existed since the beginning of the federal-tribal relationship. I understand that the Six Nations of the Iroquois Confederacy retain original title to their lands and have been considered restricted fee Indian Country since the United States was founded. The U.S. government has no role in the regulation of Six Nations lands use.

In sum, while restricted fee lands and trust lands have some similarity, the main difference is that owning restricted fee lands preserves and respects the self-governance of tribal governments.

#### WHY THE LUMMI NATION SUPPORTS ENACTMENT OF THE AMERICAN INDIAN EMPOWERMENT ACT

The Lummi Nation supports the American Indian Empowerment Act because we wish to restore exclusive use of our own land. I say "restoration" because we owned our land at the time we entered into our treaty with the United States in 1855 but for some reason, our lands have been considered to held "in trust" under federal ownership. I think the reason is because the BIA wanted to control our lands and our people. Because of this, we have had seven generations of paternalism that has undermined our growth.

Why does owning our own land matter? Because we believe in self-governance and we want to exercise maximum authority over our own land. We are currently doing this through self-governance in many program areas already. We want to eliminate BIA approval for any decisions relating to our land use. Even if it is only for one acre of land, it will be an important option for us in the future.

Specifically, we would like to more easily utilize our lands for economic development. Having to ask permission of the BIA before we pursue development is burdensome and demeaning. We want to clear the way to promote investment, establish businesses, create jobs, and rebuild our own economy. We want our freedom back.

I'll give you an example. When I was the tribe's economic director, we spent two years trying to put up a sign on our trust lands. The BIA made us rewrite our plan two times, with months lost going back and forth between us and the Bureau. And this was simply to put up a sign to advertise our enterprises.

The Lummi Nation is fully capable of regulating our internal land use for leasing and economic development. We do it already under Title 15 of the Lummi Code. We believe that

our treaty relationship means that the federal government must protect our lands and waters, but not regulate them at the expense of our tribal government.

WHY THE AMERICAN INDIAN EMPOWERMENT ACT IS  
A NEW CHAPTER IN TRIBAL SELF-GOVERNANCE

We have come a long way since the Self-Determination Act was established in 1975. The Self-Governance Act has expanded to Interior, the Indian Health Service, and the Transportation Department. We urge Congress to continue with this federal Indian policy regarding tribal land ownership and land regulation.

Both the Congress and Indian Country know full well the benefits of tribal self-government over land use. In 2012, the Congress enacted the HEARTH Act to establish a process to allow tribal government leasing authority of trust land for up to 50 years. The HEARTH Act is a significant development in recognizing tribal government authority to lease trust lands. While the BIA must approve a HEARTH Act tribal leasing ordinance, implementation is subject to the authority of the tribal government.

The American Indian Empowerment Act completes this policy of recognizing tribal sovereignty to regulate land use. It would streamline future decisions regarding tribal land use and eliminate the BIA from the land management process. The United States would remain responsible for protecting our lands from confiscation or regulation by outsiders, but would no longer be involved in our internal land use decisions. That, in my view, is what tribal sovereignty is all about.

CONCLUSION

In conclusion, I realize that there are many threats that we Indian people face and that many of those threats focus on our lands and resources. The American Indian Empowerment Act is one step closer to regaining full control over our land use. Not all tribes may wish to pursue restricted fee lands, and that is their sovereign choice. But for those of us who seek this option, the Congress should continue with over 50 years of Indian policy that supports tribal self-determination and self-government.

Owning title to land, and having our ownership recognized, is an essential attribute of humanity. Historic policies of the United States have denied that right to indigenous peoples. It is one reason why Native peoples continue to live in poverty in so many places. We are willing to do our part to invest, create opportunities, and employ our people and our neighbors. We are doing this already. The American Indian Empowerment Act will be a new tool in our toolbox that we can use to self-govern.

*Hysh'ke.*

<sup>2</sup> See *Citizens Against Casino Gambling in Erie County v. Hogen*, (W.D.N.Y., Jul. 8, 2008) at 69 (“Congress has treated trust land and restricted fee land as jurisdictional equivalents in a number of Indian statutes of general applicability.”).

<sup>3</sup> “Indian Country” includes “reservations”, “dependent Indian communities”, and “allotments”. See 18 U.S.C. § 1151. Tribal nations owning lands in restricted fee status are Indian Country.

See *U.S. v. Sandoval*, 231 U.S. 28 (1913) (Pueblos); *Indian Country U.S.A., Inc. v. State of Oklahoma*, 829 F.2d 937 (10<sup>th</sup> Cir. 1987) (Creek Nation); CACGEC, *supra* (Seneca Nation).

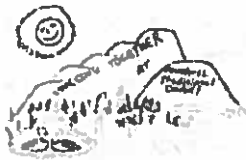
<sup>4</sup> See *Citizens Against Casino Gambling in Erie County v. Chauduri*, (2<sup>nd</sup> Cir. 2014), at 55-57.

<sup>5</sup> 25 U.S.C. § 177; 25 C.F.R. § 151.2(e).

<sup>6</sup> See CACGEC, *supra* note 2 at 70 (“[W]here land is held in trust or is subject to a restriction against alienation imposed by law, a state is without jurisdiction over the land except as permitted by the federal government.”).







**Native Village of Marshall**

**Marshall Traditional Council**

**P.O. Box 110**

**Marshall, AK 99585**

**Phone: (907) 679-6302 Fax: (907) 679-6187**

August 2, 2017

Senator Lisa Murkowski  
522 Hart Senate Office Building  
Washington, D.C. 20510

Representative Don Young  
2314 Rayburn House Office Building  
Washington, D.C. 20015

Senator Dan Sullivan  
702 Hart Senate Office Building  
Washington, D.C. 20510

Re: *Support for Alaska Native Corporation Indian Country Investment Act*

Greetings Senator Murkowski, Senator Sullivan, and Representative Young:

We write to request your support to promote investment opportunities between Alaska Native Corporations and federally-recognized Indian nations and tribes.

As the attached draft bill and narrative indicates, we seek the opportunity for ANCs to be treated like federally-recognized tribal governments for tax purposes for our business activities on federal trust lands in the Lower 48 tribes. Since tribal governments that serve Native people are immune from federal and state income tax for income earned within their territories, we seek the same tax-immune status for our business activities conducted in partnership with Indian nations and tribes as we exist to serve Native people as well.

Tribal governments, of course, must authorize and consent to whatever business activities we might wish to pursue together within tribal lands. Through dialogue and negotiation, we believe that there would be many economic opportunities to pursue for both tribal governments as well as our Native shareholders.

We believe this is a "win-win" opportunity for ANCs, Indian nations and tribes, and the U.S. government. Our Corporations have achieved significant successes in business since the Alaska Native Claims Settlement Act was enacted in 1971. We seek to expand those opportunities through the Alaska Native Corporation Indian Country Investment Act and ask Congress for its support.

We are very much interested in collaboration with this initiative and respect whatever direction you believe best for dialogue. We are hopeful you are interested in working together on this important initiative.

Sincerely,

By: Nikolai Dunny, President

cc: Andrew Guy, President/CEO Calista Corporation  
Jackie Pata, NCAI Executive Director  
John Dossett, NCAI General Counsel

**Native Village of Marshall**  
Marshall Traditional Council  
P.O. Box 110  
Marshall, AK 99585  
Phone: (907) 679-6302 Fax: (907) 679-6187



**Resolution 2017-22**

A resolution in support of H.R. 215, *the American Indian Empowerment Act* To empower federally recognized Indian tribes to accept restricted fee tribal lands

WHEREAS, The Native Village of Marshall is a federally, recognized tribe authorized by its Constitution and Bylaws to represent and act in all matters that concern the general welfare of the Tribe; and,

WHEREAS, the Native Village of Marshall wishes to support H.R. 215 the American Indian Empowerment Act of 2017 introduced by Alaska Congressman Don Young on January 2017, and WHEREAS, On December 18, 2014, the Assistant Secretary of the Interior – Indian Affairs issued new regulations to Indian Reorganization Act § 5 (25 USC 465) to remove the “Alaska exception” to the fee-to-trust process and allow land to be taken into trust for the benefit of Alaska Natives tribal governments (25 CFR Part 151), and

WHEREAS, On August 15, 2016, the State of Alaska announced that it would not appeal the decision in *Aktiochok Native Community et al. v. U.S. Department of the Interior*, et al. (U.S. Ct. App., Jul. 1, 2016), in which it unsuccessfully challenged the BIA’s application of the fee-to-trust procedure in Alaska. Accordingly, efforts are now underway to implement the fee-to-trust process in Alaska, and

WHEREAS, If Alaska Native tribal governments and corporations have their lands taken into trust, then they will lose title and ownership of those lands to the United States and be subject to new federal regulatory restrictions such as approval of leases and added development restrictions. It will mean that the BIA will own Alaska Native lands as “trustee” and can dictate land use terms and conditions to Native governments and corporations now and forever in the future, AND

WHEREAS, “Restricted fee” lands are a form of Indian Country land status in which land title is owned by the tribal government, but which federal law restricts from sale, alienation and state taxation and regulation (25 USC § 177). Restricted fee lands exist primarily in New York, Oklahoma, and New Mexico where treaties and early land transactions recognized the ownership of the tribal lands by the tribal governments but which the U.S. sought to protect from sale by designating Indian Country status, AND

WHEREAS, For legal purposes, “trust land” and restricted fee land” are both Indian Country. However, the difference is that the United States does not own “restricted fee land” and thus

the BIA does not exercise control over tribal land use nor is said land subject to certain federal regulatory controls such as NEPA., AND

WHEREAS, H.R. 215 is legislation sponsored by Rep. Don Young that would allow any federally-recognized Indian tribe to convert their existing trust lands into restricted fee lands. It is an option for tribal governments, but not a requirement or a mandate. While this legislation was originally designed for Lower 48 tribal governments, it could be amended to apply to ANCSA-restricted lands owned by Alaska Native tribal governments and corporations.

WHEREAS, Alaska Native lands are already subject to certain ANCSA-related restrictions, but are not considered Indian Country. H.R. 215, as amended to address Alaska, would create a streamlined procedure for these lands to be considered Indian Country without the need to relinquish fee title to the United States. It could be a "win-win" for Alaska Natives. Expanding tribal sovereignty over a tribal land base, but not at the expense of giving away title and control of the land to the federal government. It would not authorize BIA control over leasing and regulation of Native lands. And it would avoid the paternalism associated with the fee-to-trust process that implies that Native people cannot be trusted to own and regulate their own land. Alaska Natives already own our own land – we simply seek to have restored the sovereignty authority over these lands taken away by ANCSA.

NOW THEREFORE BE IT RESOLVED, The Native Village of Marshall declares its support for H.R. 215, *the American Indian Empowerment Act* To empower federally recognized Indian tribes to accept restricted fee tribal lands, and

NOW THEREFORE, BE IT RESOLVED, The Native Village of Marshall urges the Association of Village Council Presidents to adopt this resolution in the Fall 2017 Convention to introduce the resolution of support at the Alaska Federation of Natives convention.

#### CERTIFICATION

I hereby certify the foregoing was considered by the Native Village of Marshall and adopted this 10<sup>th</sup> day of August 2017 with a vote of 6 yes, and 0 no, and 0 abstaining.

  
\_\_\_\_\_  
Nicholai Dony, President

  
\_\_\_\_\_  
Kimberly O'domin, Secretary





CALISTA CORPORATION  
www.calistacorp.com

October 10, 2017

VIA EMAIL

Hon. Doug LaMalfa, Chairman  
U.S. House of Representatives  
Subcommittee on Indian, Insular &  
Alaska Native Affairs  
322 Cannon House Office Building  
Washington, D.C. 20515  
[kevin.eastman@mail.house.gov](mailto:kevin.eastman@mail.house.gov)

Hon. Norma Torres, Ranking Member  
U.S. House of Representatives  
Subcommittee on Indian, Insular &  
Alaska Native Affairs  
1713 Longworth House Office Building  
Washington, D.C. 20515  
[Rudy.Soto@mail.house.gov](mailto:Rudy.Soto@mail.house.gov)

Hon. Don Young, Chairman Emeritus  
U.S. House of Representatives Resources Committee  
2314 Rayburn House Office Building  
Washington, D.C. 20515  
[alex.ortiz@mail.house.gov](mailto:alex.ortiz@mail.house.gov)

Re: *Support for H.R. 215, the American Indian Empowerment Act*

Dear Chairman LaMalfa, Chairman Young, and Ranking Member Torres:

On behalf of the Calista Corporation, this letter is to request your support to enact H.R. 215 to promote greater Native government control and reduce federal government interference over within Indian Country.

As you know, despite the success of gaming and resource development in many places in Indian Country, poverty remains prevalent. Given historic efforts by the United States to confiscate Indian lands and weaken tribal economies, there are tremendous legal, regulatory and bureaucratic obstacles to tribal economic development today.

An important area where tribal governments have historically lost control is tribal land use. Most tribal lands in the United States are considered to be held "in trust", which means they are "owned" by the federal government for the benefit of sovereign Indian tribes. It also means that the federal government controls tribal land use. These controls include direct land use control by the Bureau of Indian Affairs, limitations on the ability of tribal governments to issue leases and rights-of-way for business development purposes, and costly and duplicative environmental review. Because of the trust status of tribal lands, business activity is frustrated and tribal economies are not allowed to fully develop.

Recently, efforts are underway to have Native lands taken into trust for Native governments in Alaska. We believe that H.R. 215 is a better approach as it protects Native land title but without conferring greater authority to the federal government.

H.R. 215 maximizes tribal government authority over land use by recognizing tribal ownership of tribal lands in "restricted fee" status. Restricted fee lands are owned by the tribal government, remain under its sovereignty and jurisdiction, and are protected by the United States against alienation and taxation under the Nonintercourse Act, 25 U.S.C. §177. By recognizing fee title ownership to tribal governments, federal land use restrictions would be eliminated, freeing up the tribal land for easier development and regulation by the tribal government owners. Like trust land, restricted fee lands are considered Indian Country for jurisdictional purposes.

Restricted fee tribal land ownership is not a new concept – it dates to the earliest days of the federal-tribal relationship. To this day, the Six Nations of the Haudenosaunee in New York are recognized by the United States as owning title to their lands and thus are not subject to federal government land use controls. The only government that controls land use in the Six Nations today are the tribal governments. I suggest that this approach maximizes tribal sovereignty and maximizes the opportunity for tribal economic development. All tribal governments, including Alaska Native tribal governments, should have this opportunity.

The need for this legislation for Alaska Natives is great. Federal appropriations dollars are flat, but tribal populations are growing and, so too, are the responsibilities of tribal governments to provide for their citizens. Archaic and paternalistic conceptions of tribal landholding should be eliminated in favor of tribal land ownership to support tribal economic growth.

We ask you to support the process of restoring tribal sovereignty over tribal land ownership and land use by seeking enactment of H.R. 215. If you have any questions, please do not hesitate to contact me. Thank you for your support.

Sincerely,

CALISTA CORPORATION



Andrew Guy  
President and CEO

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.



The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible – plants don't grow – there will be no life – nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai – PEOPLE OF THE TALL PINES –

**HUALAPAI TRIBE  
OFFICE OF THE CHAIRPERSON**

*Damon R. Clarke, Ed.D.*  
Chairman

P.O. Box 179 / 941 Hualapai Way • Peach Springs, Arizona 86434  
(928) 769-2216 • 1-888-769-2221

*Phillbert Watahomigie, Sr.*  
Vex Chairman

September 19, 2017

VIA EMAIL

Hon. Doug LaMalfa, Chairman  
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Subcommittee on Indian, Insular &  
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Hon. Norma Torres, Ranking Member  
U.S. House of Representatives  
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Re: *Support for H.R. 215, the American Indian Empowerment Act*

Dear Chairman LaMalfa, Ranking Member Torres, and Chairman Young:

On behalf of the Hualapai Tribe, this letter is to request your support to enact H.R. 215 to promote greater tribal government control and reduce federal government interference over tribal lands.

As you know, despite the success of gaming and resource development in many places in Indian Country, poverty remains prevalent. Given historic efforts by the United States to confiscate Indian lands and weaken tribal economies, there are tremendous legal, regulatory and bureaucratic obstacles to tribal economic development today.

An important area where tribal governments have historically lost control is tribal land use. Most tribal lands in the United States are considered to be held "in trust", which means they are "owned" by the federal government for the benefit of sovereign Indian tribes. It also means that the federal government controls tribal land use. These controls include direct land use control by the Bureau of Indian Affairs, limitations on the ability of tribal governments to issue leases and rights-of-way for business development purposes, and costly and duplicative environmental review. Because of the trust status of tribal lands, business activity is frustrated and tribal economies are not allowed to fully develop.

To address these concerns, the Congress enacted the HEARTH Act in 2012, Pub. L. 112-151, 126 Stat. 1160, which improved the ability of tribal governments to lease trust lands.

An alternative approach, however, which maximizes tribal government authority over land use is to recognize tribal ownership of tribal lands in "restricted fee" status. Restricted fee lands are owned by the tribal government, remain under its sovereignty and jurisdiction, and are protected by the United States against alienation and taxation under the Nonintercourse Act, 25 U.S.C. §177. By returning fee title ownership to tribal governments, federal land use restrictions would be eliminated, freeing up the tribal land for easier development and regulation by the tribal government owners. Like trust land, restricted fee lands are considered Indian Country for jurisdictional purposes.

Restricted fee tribal land ownership is not a new concept – it dates to the earliest days of the federal-tribal relationship. To this day, the Six Nations of the Haudenosaunee in New York are recognized by the United States as owning title to their lands and thus are not subject to federal government land use controls. The only government that controls land use in the Six Nations today are the tribal governments. I suggest that this approach maximizes tribal sovereignty and maximizes the opportunity for tribal economic development. All tribal governments should have this opportunity.

H.R.215 would authorize any tribal government – at its choosing – to convert part or all of the trust lands it occupies to restricted fee lands. It would expand the ability of tribal government to exercise sovereignty over those lands, preserve the authority of the federal government to protect tribal land ownership, and protect against state and local government jurisdiction.

The need for this legislation within Indian Country is great. Federal appropriations dollars are flat, and gaming enterprises continue to be the primary source of revenue for most Indian nations. Tribal populations are growing and, so too, are the responsibilities of tribal governments to provide for their citizens. Archaic and paternalistic conceptions of tribal landholding should be eliminated in favor of tribal land ownership to support tribal economic growth.

We ask you to support the process of restoring tribal sovereignty over tribal land ownership and land use by seeking enactment of H.R. 215.



If you have any questions, please do not hesitate to contact me. Thank you for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Damon H. Clarke". The signature is written in a cursive style with a horizontal line underneath the name.

Damon Clarke, Chairman  
Hualapai Tribe

