

**United States Senate Committee on Indian Affairs
Hearing on S. 1080
Crow Tribe Land Restoration Act
May 15, 2008**

**Testimony of Chairman Carl Venne
Crow Nation**

I. Introduction

Good morning. My name is Carl Venne and I have served as the Chairman of the Crow Nation since the year 2002. On behalf of the Crow Nation (Apsaalooke), I want to thank Chairman Dorgan and the members of the Senate Committee on Indian Affairs for holding this Hearing on S. 1080, the Crow Tribe Land Restoration Act. I would also like to thank Senators Max Baucus and Jon Tester for their sponsorship of this important bill.

S. 1080 directly addresses the serious problems of the loss of our homelands through fractionation, allotment and tax foreclosures. Furthermore, the Crow Nation land base remains at risk, with the potential loss of as much as a half a million or more acres in the near future. The underlying cause of our land base problems is derived from the federal policy of allotment, which depleted the Indian land base nationwide by about two thirds from 1887 to 1934 (from 138 to 48 million acres). Over a 70-year period, Crow territory was reduced by 92% to its current 2.2 million acre area.

Because of allotment and federal probate of Indian property (with many Indians dying without wills), the phenomenon of fractionated land ownership arose - where several (sometimes hundreds of) owners might have varying interests in a single parcel. Similarly, allotment, fractionation and the loss of the tribal land base collectively resulted in checkerboard ownership of reservation lands, giving rise to overlapping governmental authority in Indian country (federal, state, tribal and local). Consequently, tribes with heavily allotted lands are faced with a situation where they must spend valuable resources trying to protect their remaining lands.

On the other hand, other individuals (non-Indian) owning lands within the reservation (and almost everywhere outside of Indian country) have a relatively easy time protecting and making use of the land they own. Selling land to outsiders for less than its value further reduces the land base and the options for tribal citizens, and federal attempts to remediate these problems have been unsuccessful. Importantly, then, S. 1080 provides a mechanism by which the Crow Nation can repurchase significant lands and interests in land and to benefit once again from the economic potential of these lands, as was the intention of their being originally set aside for the Crow Nation and its citizens.

II. Tribal Land Base, Marshall Trilogy and Problems

Overview

Nothing is more important to Indian people than their land. Having a protected land base, active and healthy citizens, and defined political boundaries is essential to a tribe's sovereignty and existence as a government. When Chief Justice John Marshall and the U.S. Supreme Court decided the early cases and controversies that provided the foundation of federal Indian law, he reflected that even under a doctrine of conquest and incorporation, where possible, "humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers."

Even where Europeans saw Indians as mere occupants of their lands, they were to be protected in that occupancy. A close reading of the Marshall Trilogy, the foundational Indian law cases, reveals that the U.S. Supreme Court would have supported a more complete view of property rights of tribes when they settled peacefully and allied with the United States, as did the Crow Nation from its earliest contacts. Moreover, two important but less often cited U.S. Supreme Court decisions have recognized and declared that "Indian lands are as sacred as the fee simple of whites." See *Mitchel v. U.S.*, 34 U.S. 711 (1835) (holding that the United States was obligated to respect existing Seminole property rights when it gained possession of Florida). Similarly, in *U.S. v. Shoshone Tribes of Wind River Reservation in Wyoming*, 304 U.S. 111 (1938), the Court found that "the tribe's right of occupancy was incapable of alienation or of being held otherwise than in common, *that right is as sacred and as securely safeguarded as if fee simple title,*" and that the beneficial use for such rights as minerals and timber was vested in the Tribe and not in the United States.

Until 1970, the era of self-determination, federal Indian policy decimated the land base and the subsistence possibilities of Indian tribes and their citizens. During the reservation era (1830s to 1880s), from the idea of Indian Territory (Oklahoma today) to other strategies of containment, the United States made treaties with Indian nations that asked them to concede vast sections of their homelands in return for specific payments and obligations on the part of the United States. Importantly, those agreements almost universally contained a guarantee of the protected use and enjoyment of the remaining reservation lands.

After the reservation era, federal Indian policy shifted to allotment - breaking up the tribal land base by allotting smaller subsections of tribal lands to individual Indians. The overarching policy was to break Indians from their culture, dismantle tribal governments, and assimilate Indians into mainstream American culture. The allotment policy was declared by Congress in the *General Allotment Act* (Dawes Allotment and Severalty Act) of 1887. However, hundreds of specific allotment acts were passed by Congress over the subsequent forty years that specifically applied to particular reservations. One of these specific pieces of legislation was the 1920 Crow Allotment Act.

Even when passed, the Dawes Act was controversial. The motivation behind the policy came from the confluence of western settler colonialism and white northern liberal progressivism, a powerful phenomenon described by President Theodore Roosevelt in his 1901 *State of the Union Address* as a “mighty pulverizing engine to break up the tribal mass”. One of the most vocal opponents of the allotment policy was George W. Manypenny, the Commissioner of Indian Affairs who was responsible for early allotments as part of the many treaties he negotiated with Indian tribes. Arguing against allotment as a federal policy, he assessed his earlier work: “Had I known then, as I know now, what would result from those treaties, I would be compelled to admit that I had committed a high crime.”

By 1928, the *Meriam Report* declared the federal allotment policy to be one of the most disastrous federal policies of all time. During discussions leading up to the *Indian Reorganization Act* of 1934, one congressman explained the fractionating effects of allotment in this fashion:

“It is in the case of the inherited allotments, however, that the administrative costs become incredible.... On allotted reservations, numerous cases exist where the shares of each individual heir from lease money may be 1 cent a month. Or one heir may own minute fractional shares in 30 or 40 different allotments. The cost of leasing, bookkeeping, and distributing the proceeds in many cases far exceeds the total income. The Indians and the Indian Service personnel are thus trapped in a meaningless system of minute partition in which all thought of the possible use of land to satisfy human needs is lost in a mathematical haze of bookkeeping.” 78 Cong.Rec. 11728 (1934), cited in *Hodel v. Irving*, 481 U.S. 704 (U.S.S.D. 1987).

In 1934, Congress expressly repudiated the allotment policy with passage of the *Indian Reorganization Act*. Despite this action by Congress, the current U.S. Supreme Court repeatedly cites allotment as the source for Congressional intent to justify further erosion of tribal governance, and simultaneous enhancement of state and local authority, over the remaining reservation land base.

Today, we have to live with the detrimental impacts of poor decisions of previous federal policymakers. First, decisions were made to remove the Indians from their homelands in the east and place them in confined areas in the northern and southern Midwest. Second, federal policymakers decided to confine Indian tribes to certain reservation lands and repeatedly sought land cessions to allow for non-Indian settlement. Third, Congress decided to break up the remaining land base with allotment. Finally, Congress terminated its relationship with over 100 Indian tribes and simply subjected their remaining assets to state and local control, with a less than fair market value payment.

Fractionation

Throughout Indian country, land fractionation has become a problem of unimaginable proportions – touching upon almost every area related to land within the reservation.

One serious consequence of fractionation is that the federal government's trust responsibility toward Indian people has been let to lapse. Lease payments on trust lands are paid into federal accounts (Individual Indian Money Accounts) of individual tribal citizens, under the administration of the United States. In *Cobell*, a primary issue is centered upon the loss and other mismanagement of these fractionated interests, funds, and accounts. In some cases, some tribal citizens have seen their interests disappear altogether while under the care of those who are supposed to protect them.

Federal law defines highly fractionated land as land for which a single parcel has 50 or more owners, with no single owner owning more than 10 percent of that land, or land that has 100 or more co-owners of undivided interests. 25 U.S.C. §1201. For instance, imagine that you owned a piece of land with 50 or more other people, some of whom you did not know and others who were very closely related to you. Only when you place yourself within this position can you begin to picture how difficult every transaction is under such circumstances and you can feel a small sense of what fractionation has done. At any moment in time, it is likely that some of those fractionated interests would be in the process of being probated, further reducing any chance of economic viability.

Another example also demonstrates serious practical problems with land in Indian country. A common issue in land ownership on Indian reservations is that someone owns a house that is on a home site on a larger piece of land (e.g., two acres of land within a hundred and sixty acres of land). Even if the home has been built in an agreed upon place, it is possible that the land belongs to dozens of other people. If the home's ownership follows the land, as is often legally the case, then the question of who might inherit that home is an extremely complex one. A piece of land that might support eighty home sites may have none because financing is unavailable under such circumstances and the puzzle of ownership cannot be solved.

Similarly, what if this parcel of land is completely surrounded by land owned by other individuals and some of those owners want to lease it to the neighboring land owners to farm? What if some of the owners want to allow an energy company to purchase a right-of-way for a pipeline or electric line across their property? Some of the shares involved are worth fractions of a penny, and yet those owners have rights in the lands. What if you needed the agreement of 30 other co-owners, and the approval of a federal agency as well, to conduct any business with regard to your land? This regime is not tribal or communal ownership but a chimera created by federal policy.

In 1983, Congress passed the *Indian Land Consolidation Act* (ILCA) to address fractionation. Under the ILCA, tribes could work with the approval of the Secretary of the Interior to eliminate fractional interests and consolidate tribal landholdings. In two later cases, various provisions of the ILCA that would appropriate small interests without owner consent were struck down as unconstitutional and those provisions were later amended by Congress. In sum, the continuing onslaught on tribal lands represents the fundamental betrayal of federal responsibility toward the first Americans - Indian tribes and their citizens - and yet there has been little and ineffective response to the concerns of the large land based tribes that suffer the most from fractionation issues.

III. History of the Crow Indian Reservation

Even though fractionation is a national problem, Indian nations have different histories and unique experiences. Many Eastern tribes were dispossessed or lost their lands well before the Reservation Era, while other tribes were terminated in the 1950s and 1960s and had (some continuing) to seek federal recognition and restoration of their lands. This is one reason the *Indian Land Consolidation Act* has not had much success — one size definitely does not fit all. Some Indian nations with a relatively large land base were not allotted; while others have had their whole reservations broken into allotments. For this reason, federal legislation must be tailored to individual tribes or small groups of tribes.

Treaties and Allotment

After the Ft. Laramie Treaty of May 7, 1868, wherein the Crow Nation reserved 8 million acres out of 38 million acres designated as its lands in an earlier treaty in 1851, a number of acts provided for the allotment of Crow lands. Those arguing for the allotment and opening of the Crow Indian Reservation to outsiders in the nineteenth and twentieth centuries performed a grotesque kind of algebra. They determined the needs of individual tribal members and the best way to make the Reservation's most valuable lands into so-called surplus lands, which were often sold to outsiders.

In 1919, prior to the 1920 Allotment Act, there were already 2,453 allotments, consisting of 482,584 acres. In discussions leading up to the 1920 Crow Allotment Act, Crow representatives repeatedly stressed their desire to keep and protect their lands and to make their own decisions. Therefore, as part of the 1920 Act, Congress expressly promised to limit other outside interests from swallowing up Crow land. In Section 2 of the 1920 Act, the Crow obtained a provision that limited outsiders from buying large sections of Crow land.

According to this provision, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation who already owned at least 640 acres of agricultural or 1,280 acres of grazing land within the Crow Reservation. Further, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation that, with the conveyance, would own more than 1,280 acres of agricultural or 1,920 acres of grazing land. A conveyance of Crow land exceeding these restrictions was considered void and the grantee was guilty of a misdemeanor, punishable by a \$5,000 fine and/or 6 months in jail.

Since passage of the 1920 Act, the Crow Nation's federal trustees failed to enforce Section 2 of the statute and enforcement continues to be non-existent. Today, approximately one third of the acreage of the Reservation is owned in violation of the 1920 Allotment Act. By 1935, there were 5,507 allotments, consisting of 2,054,055 acres (218,136 acres were alienated by 1935). Eventually all but the sections of the Pryor and Bighorn Mountains on the Reservation were allotted, a total of over 2 million acres by 1935 in a reservation that had been reduced by cession to approximately 2.2 million

acres. Approximately 700,000 acres of the Crow Reservation, or almost one third of the land mass of the Reservation, are presently owned by non-Indians in violation of Section 2 of the 1920 Crow Allotment Act.

The Crow Nation has sought, through a number of means, to have its rights enforced but justice has not been served. In the most important case on Crow allotment, the Crow Nation sought relief against companies that owned large sections of land (45,000 acres and 140,000 acres, respectively). In *Crow Tribe of Indians v. Campbell Farming Corp.*, 31 F.3d 768 (9th Cir. 1994), the Ninth Circuit Court of Appeals held that the 1920 Crow Allotment Act did not afford the Tribe a cause of action; the Supreme Court denied certiorari in 1995. All of these lands still have titles clouded by their Section 2 status, and their situation has become more complicated over time.

Needless to say, failed federal policies and statutes that eviscerated the land base of the Crow Indian Reservation in this matter are historic and ongoing violations of the treaty relationship between the Crow Nation and the United States. Moreover, on an individual and collective group basis, even as Indians were being criticized for not making the most of their agricultural lands, their opportunity to do so was being taken from them along with the lands themselves. Perhaps the non-Indian public believed that Crow Indians could not farm; reality, however, directly contradicted the public's misperception.

Livestock and Agriculture

As J.D. Pearson found in her work on building reservation economies, already in 1886, Agent Henry Williamson reported that livestock was providing most of the income for the Crow and that they owned more than 1,900 head of cattle. Early in the twentieth century, federal officials worked to break up successful community gardens at Crow because they preferred individual farmers. In 1900, with substantial portions of the Big Horn irrigation ditch dug by Crow workers, Crow farmers milled almost half a million pounds of flour as well as wheat, oats, and hay to feed the reservation. As the irrigation system expanded, however, Crows found themselves out of work as, despite promises of tribal preference in employment on the irrigation projects, both the jobs and the resources that went with them were offered to others.

As with other tribes early in the twentieth century, Crow citizens made successful efforts at agricultural pursuits. Reports of the Secretary of the Interior for the Fiscal Year Ending June 15, 1915, showed that 69.7 percent of the able men of Crow were farmers and ranchers, 379 men total. By 1916, the Crow Nation had the largest horse herd in the world and a cattle herd of over 30,000 head. *The Crow Nation was already agriculturally self-sufficient (the professed federal goal of allotment) before Congress mandated the 1920 Crow Allotment Act.* Thus, Crow allotment actually undermined Crow self-sufficiency within their own lands.

Competency and Leasing Crow Lands

Leasing is another area in which allotment and fractionation have added to problems Crow citizens must overcome to benefit from their own lands. Lands held in trust for individual Indians often earn money for their owners by being leased to others for grazing or agricultural use, a practice subject to extreme abuse through the years. In their efforts to assert some control over their own lands, Crow representatives fought to get statutes passed that affirmed the right of individual Indian landowners to approve their own lease rates. A 1926 amendment to the 1920 Crow Allotment act allowed “competent” tribal citizens to make their leases for five year periods without agency approval. Several more amendments were passed because of lessee abuse – e.g., some lessees would provide small future payments to impoverished landowners to control land for increasingly extended periods of time, effectively gaining the land for themselves for almost nothing.

In 1947, the Indian competency provisions extended from the original allottees to include their heirs. At this time, on the eve of the federal termination era, tribal representatives and congressional advocates had to fight once more to prevent the Crow Reservation from being taken out of trust altogether. The final language affirmed the right of individual competent Crow Indians to approve their own leases. Yet today, fractionation has perverted this intent because the common definition of a “competent” lease at Crow is one having fewer than five owners, and the leases for lands with more than five owners must still be approved by the BIA. The overall control of the leasing of Crow lands rests not with the Crow Nation, its citizens, or even the BIA, but rather with outside leasing companies that continue to dominate the business.

Important Example of Current Problems with Leasing

The Crow competent lease acts were intended to help Crows but instead the acts appear to have helped non-Indian residents of the Crow Reservation. One especially egregious example (the case is still ongoing) will illustrate fundamental problems with leasing individual Crow lands. Our Chief Legal Counsel, Donald Laverdure, is by definition a Crow competent landowner (only he and his sister, both enrolled Crow citizens, own a 320 acre allotment) and can therefore lease his land without BIA approval. Over 5 years ago, Mr. Laverdure sought to renegotiate his competent lease with a third party leasing agent (who represents a consortium of farm families and corporations against individual Crow Indians) from 1950s rates to modern lease rates.

The leasing agent claimed that the lessee could not afford to increase rates and simply sought to renew the 50-year old rates. After repeated attempts to negotiate, Mr. Laverdure decided not renew his lease and instead applied to the local Hardin office of the U.S. Department of Agriculture to become eligible to receive drought assistance grants and crop rotation grants (he had decided to let the land lay idle because of overgrazing and lack of crop rotation and the potential grants would be the equivalent of one-half of past lease rentals from his former lessee). At a meeting, Mr. Laverdure was informed by a local USDA employee and her supervisor that his competent Crow Indian land had been leased by the BIA without his notice or consent.

Upon investigation, Laverdure found that one of the USDA employees was possibly related, by marriage, to the office manager of the leasing company. In addition, Laverdure discovered that the acting BIA superintendent, Mrs. Davey Jean Stewart, had exercised unilateral authority and granted an office lease of his own Crow competent allotment to the existing lessee, without his notice or permission. Undoubtedly, this action violates federal law – the Crow competent leasing statutes and federal regulations. Even though Laverdure pursued administrative relief within the BIA for several years, he did not receive a reply, written or verbal, until 2 years after the office lease had been granted in violation of federal law.

Laverdure received a written reply from Mrs. Stewart stating that she was exercising her BIA trust duties (on behalf of the entire trust land area, not just the specific allotment at issue) in renewing the 50-year old lease rates to the existing lessees. She said that her trust duties demanded that she consider all interests, farming and agricultural, and therefore could not follow Laverdure's own wishes with respect to his own land. Mr. Laverdure and his sister are still pursuing administrative and legal remedies after 5 years, and still appear to have no relief in sight.

Sadly, Laverdure's situation is not unique or isolated. I have been informed by several other individual Crow Indians that they have faced similar problems. This is an independent reason why my administration strongly feels that this Bill, S. 1080, would go a long way toward correcting these injustices (Crow Nation would take over administrative duties of Crow land in lieu of the BIA). As the Crow Nation purchases fractionated interests and Section 2 lands and regulates Crow leases, it will restore control and individual autonomy over lands belonging to the Tribe and its citizens.

Fractionation and Probate

In generations of restricted ownership, the land interests of individual Crows have further fractionated until the Crow Reservation is the third most fractionated reservation in the nation. Recent statistics show 91 tracts at Crow that have over two hundred owners, as well as an overall average of 42 owners per tract. This high degree of fractionation reduces the value of the lands outright, makes effective use by the owners impossible, especially frustrates the interests of minority owners, and results in prohibitive administrative costs and serious risks of injustice for any transaction.

While Crow was approved for a model project under the *Indian Land Consolidation Act*, progress has been very slow, resulting in the purchase of only a few hundred interests out of hundreds of thousands. The pilot program demonstrated a willingness among nearly all individual owners to sell their fractionated interests, but did not make significant progress toward consolidating the interests under tribal ownership.

Fractionation concerns have also dominated probate reforms under the *American Indian Probate Reform Act*. In the early stages of these reforms, Crow and other tribes have been faced with additional burdens: (i) communicating the constant changes in law, not including tribal probate codes because Interior had not approved a model code; and (ii)

providing unfunded estate planning assistance to individual Crows. The latter burden has become especially important because the Bureau of Indian Affairs simply stopped providing estate planning assistance. In addition, the Department of Interior has been ineffective in trying to overcome huge deficiencies in probate backlogs because many files are missing or out of date and the interests at issue are often fractionated.

Cumulative Impact on Crow Reservation Land Ownership

Today, the Crow Reservation encompasses 2,266,271 acres of lands within its exterior boundaries. 534,000 acres are owned by the Tribe in trust. 1,038,000 acres are individually owned trust lands. 700,000 acres are owned in fee by non-Indians. As recognized by the U.S. Supreme Court in *Montana v. U.S.*, 450 U.S. 544, 548 (1981), the statistical land ownership resulting from the above described legal history was: 52% Crow allotments; 17% Crow Nation trust land; 28% non-Indian fee land; 2% State of Montana fee land; and 1% federal government land.

According to more recent Bureau of Land Management Reports, the land statistics have shifted slightly: 45% Crow allotments; 20% Crow Nation trust land; and 35% non-Indian fee land. In sum, the pattern of surface ownership generally is “checkerboard” with interspersed Crow Nation trust and fee lands, Crow allotments and non-Indian fee lands. The statistics show limited success of the Crow Nation in reacquiring lost lands, but the reality is a much larger pattern of continued land loss.

Jurisdiction and Modern Problems

Allotment and the subsequent transfer of many parcels into fee lands, as well as the seizure of reservation lands for non-Indian homesteads, has created the infamous “checkerboard” pattern of criminal and civil jurisdiction. Outside of reservation boundaries, different parcels of land are owned by different owners; yet those owners do not escape the jurisdiction of the geographic sovereign. On reservations where the pattern of ownership is now almost randomly distributed between trust and fee parcels, tribal jurisdiction has been constantly intruded upon in such a fashion as to make tribal governance over the reservation almost impossible.

Tribes are frustrated in their ability to zone reservation lands, to assess taxes to fund government programs and services, to enforce their own laws, and even to provide public safety. The definition of “Indian Country” in 18 U.S.C. 1151 provides a clear definition that includes rights-of-way and allotments even after they have passed into fee, yet this statute is frequently ignored.

This checkerboard problem has interfered with Crow’s ability to govern its own reservation in a myriad of ways. In perhaps the most problematic of all Indian law cases, *Montana v. U.S.*, 450 U.S. 544 (1981), the Tribe’s attempts to regulate fishing on its own reservation were met with well-orchestrated efforts from outsiders to limit tribal sovereignty. Although the Supreme Court provided exceptions to its overall rule that Tribes do not have jurisdiction over non-Indians on fee lands, it is the general rule that is

remembered and the exceptions have been interpreted so narrowly as to be almost impossible to meet.

For example, in *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001), the Navajo Nation's ability to assess a hotel occupancy tax on a non-Indian hotel and guests within its reservation boundaries was struck down under the general rule in *Montana*. Similarly, in *Big Horn County Elec. Co-op., Inc. v. Adams*, 219 F. 3d 944 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that the Crow Tribe was not justified in imposing a 3% ad valorem tax on rights-of-way used by an electric utility for transmission and distribution (the majority of consumers are Crow Indians). Only in Indian country do rights-of-way escape the jurisdiction of the geographic sovereign.

Similarly, in *Montana v. Crow Tribe of Indians*, 523 U.S. 696 (1998), a case in the courts for two decades that dealt with the consequences of double taxation, state and tribal, on the Crow Tribe's own coal from its own reservation, the U.S. Supreme Court struck down most of the relief sought by the Tribe, which simply asked for its coal severance and gross proceed taxes (which the Department of Interior had erroneously barred from several years) that were improperly paid to the State of Montana. When the Crow Tribe tried to assess a resort tax on businesses within the Crow Reservation, that tax was struck down even in the bankruptcy proceeding of one of those businesses because it was operated by a nonmember on fee land. *In re Haines*, 245 B.R. 401 (D. Mont., 2000).

Rather than start from a position that an Indian Nation's control over its own Reservation is paramount and exceptions to tribal jurisdiction must be limited, the Supreme Court in recent years has gone out of its way to protect non-Indian fee ownership and then to extend the fee context by analogy to rights-of-way and other situations on the reservation. The Court has even begun to reverse the historic discussion and to use the evils of checkerboard jurisdiction as an argument against Indian ownership. This approach shows a clear and present threat to tribal survival and the need for immediate measures to protect tribal territory and jurisdiction through consolidation and land acquisition.

IV. U.S. Senate Bill 1080, Crow Tribe Land Restoration Act

S. 1080 was specifically crafted to address the aforementioned problems. In the work leading up to a previous version of the bill (S. 1501), we held public meetings to make sure that there was no serious opposition to the actual provisions of the bill, and that there were no outstanding budget scoring issues. The bill provides a loan (of up to \$380,000,000) to the Tribe to purchase Reservation lands and interests in lands from willing sellers. Purchased lands will be kept in trust or transferred into trust and administered by the Tribe, so that the Tribe can benefit from the economic potential of these lands. The lands will be made inalienable, so that the Tribe's land base will remain secure.

Repayments will be made from the earnings of the lands themselves. Research done when the BIA average payment per acre for fractionated land was \$4.28 an acre, subject to further loss from administrative costs, shows that as that land approaches consolidated

ownership, it will approach a higher value. Section 2 lands rented at \$20.00, almost more than four times as much. Estimates showed that the likely value of the fractionated land after purchase by the Tribe would be \$7.16 an acre. At nearly one million acres of fractionated lands, there would be the potential for three million dollars a year just in additional revenue to the system from the increased value of the land.

Senate Bill 1080 has a number of significant advantages.

- It Reduces Fractionation

The federal government is unable to manage these interests and, in many cases, has lost track of the funds they generate for holders of Individual Indian Money accounts (see cause of action and litigation by plaintiffs in *Cobell* in case against the federal government). Administering fractionated land interests is not the most efficient or useful exercise of the federal government's fiduciary duty to tribes and individual Indians. It appears that the Act can pay for itself by simply removing the costs of administering fractionated interests at the federal level.

- It Restores the Crow Nation's Land Base

At least two purposes of setting aside reservation lands for Indians included the provision of a secure homeland and the possibility of economic self-sufficiency through agricultural pursuits. Tribal land provides a home for tribal citizens, a basis for tribal sovereignty, and a means of earning funds necessary for survival. Where reservation lands are lost to other owners, tribes have the worst possible situation—having to watch others benefit from the lands intended for Indians, while being unable to assert meaningful jurisdiction over lands within their own reservations. Restoration of the land base has a whole range of secondary effects that contribute to the health and welfare of the Crow Nation and its residents.

- It Attempts to Solve 1920 Crow Allotment Act, Section 2 Problems

The Crow Nation's Section 2 cause of action was preserved from the Tribe's settlement of its Norton trust claims. On agreeable terms, S. 1080 could provide a workable solution to the Tribe's outstanding claim for the lands lost when the United States failed to enforce Section 2. The bill will save litigation costs, potential damages in this matter, and clear title to Crow lands.

- It Effectuates the Crow Nation's Right of First Refusal

The United States government recognizes the need for tribes to be able to regain lost lands and to protect and preserve lands passing from individual citizens. Tribes possess the right of first refusal when individual tribal citizens wish to sell their trust lands, a trend that continues due to ongoing hardship and the inability of individual owners to overcome the historic obstacles placed in the way of their ownership. At present, the Crow Nation stands to lose hundreds of thousands of more acres from its reservation

unless it is able to exercise its right of first refusal and keep these lands for the benefit of the Crow Nation and its citizens. Other potential purchasers often fight Crow jurisdiction within its own reservation and that leaves all parties with serious issues concerning overlapping tribal, federal, state and local government jurisdiction.

- The Potential Land Purchases Will Pay for Themselves

Particularly as costs continue to increase, there are some challenges to repayment. But through repurchase, irrigating more, keeping land in its current uses or even reclaiming land for agricultural purposes, the Tribe will be able to add to the earnings of program lands. We have done extensive research into the costs of servicing debt for land repurchase and the earning potential of the land, and are comfortable with the outlook of this program under tribal management.

Funds earned in excess of what is needed to make loan payments can nonetheless be used to add to the land base and further pay down the loans. The bill also provides a necessary five million dollar yearly appropriation for administrative costs in implementing the project and undertaking tribal management of the acquired lands.

- Additional Costs or Harms Are Insignificant

Although some fee lands may be returned to trust status in a successful land acquisition program, the collection of state taxes from these lands is quite minimal and, overall, the Crow Nation provides more services to Bighorn County than revenue or services it receives from the County. The services and secondary economic benefits provided to the County from the Crow Nation's successful use of S. 1080 lands will provide a net benefit to the County. The Nation will not have to leverage other resources or use other tribal assets.

- All Sales Are Voluntary

Because the Crow Nation's program will be the purchase of interests from willing sellers, the Nation is not forcing or demanding the return of ancient homelands.

V. A Federal Legislative Solution for a Specific Problem

Some legislation may work for all tribes, but Indian policy, geography, and different tribal cultures and histories have left tribes in different situations. S. 1080 is designed largely to alleviate the particular consequences of land loss and fractionated ownership within the Crow Reservation. However, solving land problems at Crow will go a long way toward solving fractionation and related problems throughout the United States because one-tenth of the land administered by the Bureau of Indian Affairs, as trustee for individual Indians, is at Crow.

When the Crow Nation is able to solve its land problems and repay the funds loaned under S. 1080, it will be able to use future funds earned on its lands for its own future

needs, thus saving federal dollars. By lowering federal monies spent in administering fractionated and other Crow lands, the overall federal responsibility will be reduced because the Crow Nation and its citizens will become self-sufficient. As such, BIA land assistance can be concentrated upon elsewhere in Indian country.

The fact is that Indian tribes have had many different experiences with allotment and land alienation struck different tribes and regions differently. Crow has over two million acres of allotted land, second only to the Oglala Lakota at Pine Ridge. ILCA intended for tribes to develop individual programs and therefore this Bill, S. 1080, is a specific legislative effort to accomplish what ILCA has not. Crow's actual needs based on allotment—both the extent of allotment and fractionation and the amount of allotted land on the present Reservation, as well as the other issues addressed in this testimony—are some of the most severe in the nation. Crow is also unique in the quality of lands available for repurchase and will be able to continue agricultural uses and even reclaim lands to make repayment a realistic option.

The Crow Nation, by itself, had almost twice as much land allotted as nineteen tribes in Washington combined and almost the same amount in alienation. In Oklahoma, over nineteen million acres of land were allotted and most of that total, over sixteen million acres, were completely alienated from the Tribes. Besides the moral wrongs with land loss, the GAA (Dawes Act) of 1887 occurred during a period of federalization and today's effects in Indian country amply demonstrate the error in trying to create an Indian policy that treated tribes without respect for their different cultures and histories.

Other Indian nations have their own unique stories, which constitute in part the government-to-government relationship, and have needs that must be met on their own. If you look at the recent history of Indian legislation, you will see that there are many bills that address the needs of individual tribes on recognition, water, and land claims, honoring their individual leaders, responding to specific historical wrongs. Thus, this Bill, S. 1080, may not fit the needs of the Indian Nations in Oklahoma or Washington, or the Ute Mountain Utes and Navajos with lands that were not allotted. No single legislative act could meet the diverse needs of these varied histories.

However, the Crow Nation's unique situation is shaped by its own people and culture, by the particularities of federal Indian policy and history, and by the failure of its trustees to enforce such laws as the Crow competent lease act and Section 2 of the 1920 Crow Allotment Act. S. 1080 is designed to meet the very specific needs on the Crow Indian Reservation in the most efficient way possible.

VI. Conclusion

The Crow Tribe has always been an ally of the United States. At one point in the history the United States, the federal government awarded more land north of the Yellowstone River to its allies, the Crows, in appreciation for their support. Despite being a strategic ally (like some other Indian nations), the federal government changed its mind and simply took the land away. Further, even though the land of the Little Bighorn

Battlefield was and continues to be within the Crow Indian Reservation, the Crow Nation continues to be treated as a bystander with private landowners buying up parcels to preserve and expand the Battlefield Memorial without any thought or permission provided by the Crow Nation.

Other individuals that own former Crow Nation land, both on and off the Crow Reservation, continue to receive annual federal grants and subsidies - without which they would be unsuccessful at keeping the land. In contrast, Crow tribal requests to participate in federal programs are often met with opposition. Users of Battlefield Memorial site and the Bighorn Canyon Recreation Area often trespass and recklessly harm Crow tribal lands and the most sacred sites without respect, and federal agencies refuse to cooperate with our wishes to protect our homeland and our rights.

It is time for a change. This Bill, S. 1080, is an important step in the right direction and it will provide a mechanism for the Crow Nation to right many wrongs. S. 1080 can be a model for other tribes but only if they believe that they can adapt its central purpose to fulfill their own particular needs. From our perspective, passage and implementation of S. 1080 will begin to heal old wounds and restore the honor that existed in our original, but broken, treaty relationship between our two nations, the Crow and the United States.

We know that Justice Black was right when he said, "Great nations, like great men, should keep their word." We have kept our word and we simply ask that you do the same. S. 1080 is a Bill that has minimal, if no, risk to the United States but is a Bill that can go a long way toward restoring the federal promise that exists between our great nations. Thank you for your attention and I would be happy to answer any questions.