

DEFINITION OF “INDIAN COUNTRY”

What is “Indian Country”?

Indian country includes:

1. All land within the limits of an Indian reservation under the jurisdiction of the United States government;
2. All dependent Indian communities, such as the New Mexico Pueblos; and
3. All Indian allotments still in trust, whether they are located within reservations or not.

The term includes land owned by non-Indians, as well as towns incorporated by non-Indians if they are within the boundaries of an Indian reservation.

It is generally within these areas that tribal sovereignty applies and state power is limited.

What is the difference between Indian country and an Indian reservation?

A reservation is an area of land “reserved” by or for an Indian band, village, or tribe (tribes) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations.

Indian country encompasses reservations.

What is the ownership status of land within Indian Country?

There are three basic categories of land tenure in Indian country; tribal trust lands, allotted trust lands, and fee lands.

Tribal trust lands are held in trust by the United States government for the use of a tribe. The United States holds the legal title, and the tribe holds the beneficial interest. This is the largest category of Indian land. Tribal trust land is held communally by the tribe and is managed by the tribal government. Tribal members share in the enjoyment of the entire property without laying claim to individual parcels. The tribe may not convey or sell trust land without the consent of the federal government. Tribes may acquire additional land and have it placed in trust with the approval of the federal government.

DEFINITION OF “INDIAN COUNTRY” (continued)

Allotted trust lands are held in trust for the use of individual Indians (or their heirs). Again, the federal government holds the title, and the individual (or heirs) holds the beneficial interest.

During the assimilation period, Congress enacted the General Allotment Act of 1887, also known as the Dawes Act. The ultimate purpose of the Dawes Act was to break up tribal governments, abolish the reservations, and assimilate Indians into non-Indian society as farmers. To accomplish this goal, Congress decided to divide tribal lands into individual parcels, give each tribal member a parcel, and sell the “surplus” parcels to non-Indian farmers.

The Act authorized the President to allot reservation land to individual Indians. Title to the land remained in the United States in trust for 25 years, or longer if extended by the President, then was conveyed to the Indian allottee in fee, free of all encumbrances. The trust period was intended to protect the allottee from immediate state taxation and to allow an opportunity to learn farming. Upon receiving the allotments (or after amendments in 1906 for fee title), allottees became U.S. citizens and were subject to state criminal and civil law. The Dawes Act also authorized the Secretary of the Interior to negotiate for acquisition by the United States of the so-called “excess” or “surplus” lands remaining after allotment. These “surplus” lands were to be opened to non-Indian settlement.

Although the sponsors of the Dawes Act believed that it would help Indians prosper, the effect on Indians and Indian lands was catastrophic. Most Indians did not want to abandon their culture to pursue farming. Because much of the land allotted to Indians was unsuitable for small-scale farming, Indians sold their parcels to settlers or lost land in tax foreclosure when, upon receiving a patent after 25 years, the land was subjected to state taxes.

The result was a checkerboard pattern of land ownership within many reservation that were allotted either under the Dawes Act or under the other specific allotment acts, with much of the allottee land passing out of trust status and Indian ownership. While not all reservations were allotted, the declined from 138 million acres in 1887 to 48 million acres in 1934 when the allotment system was abolished.

Fee lands are held by an owner, whether Indian or non-Indian.

Other lands in Indian country can be held by federal, state, or local (nontribal) governments. These lands include such areas as national wildlife refuges and state parks.