



**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT OFFICES**

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**Testimony of Robert Garcia
Before the
Committee on Indian Affairs
United States Senate
Washington, DC 20510**

On Behalf of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians

S. 908 and S. 356 (112th Congress)

February 2, 2012

Chairman Akaka, Co-Chairman Barrasso, Members of the Committee:

I am Robert Garcia. I am an enrolled member and Chairman of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI). I am pleased to be here to represent the members of my Tribes.

Indisputable historical and archeological evidence establishes that the three tribes making up the CTCLUSI continuously have made the Siuslaw, Lower Umpqua, and Coos River watersheds our homes. Our ancestral lands are outlined by the blue boundary on the map appended to this testimony.

Members of the Coos and Lower Umpqua tribes were forcibly removed in 1860 from their ancestral lands north to the "Coast reservation" established by Executive Order by President Pierce in the fall of 1855. The boundaries of that reservation are outlined in red on the appended map. The yellow region on the map is the area of overlap between the reservation established by President Pierce and the ancestral lands of my people.

The Siletz Tribe is just one of many tribes forced to reside within the Coast reservation. History teaches that we are no less heirs to the Coast reservation than other tribes forced into its boundaries. The Coast reservation -- and particularly its southern third -- is no more the "former reservation" of the Siletz than it is of any of the other tribes forced to remove or to remain there. We believe the 1855 Coast Reservation referred to in S. 908 might just as accurately be called the "Siuslaw Coast Reservation," "Coos Coast Reservation," or "Lower Umpqua Coast Reservation" as it could be re-named the "Siletz Coast Reservation."

In fact, in 1860, the northernmost of the three tribes now making up our confederation, the Siuslaw Indians, were able to remain in place in the Siuslaw River region which was made part of the Coast reservation. That territory is centered on modern-day Florence, and again, is the yellow region on the appended map. The people of the Siuslaw Indians have resided there since

before contact. Although other Indians, forcibly displaced from their own ancestral lands, have from time-to-time occupied land in the Siuslaw watershed, no other tribe ever has permanently inhabited the territory of the Siuslaw.

Our existence has been acknowledged by the federal government at least since the summer of 1855, when Joel Palmer negotiated on behalf of the United States the "Empire Treaty" with our tribe and others. That treaty -- which predated the Executive Order establishing the Coast reservation referred to in S. 908 -- subsequently was lost by the federal government. The Empire treaty never was ratified by the United States. The text of the Empire Treaty and the documents transmitting it from the President to Congress are available at Confidential Executive Document 9, 34th Cong., 3rd sess., "Articles of Agreement Entered Into on the Eleventh and Seventeenth Days of August," S 34B-C14, RG 46, NARA-DC. For a thoroughly documented history of the negotiation of the Empire Treaty and the failure of the United States to ratify it, please refer to David R.M. Beck, *Seeking Recognition: The Termination and Restoration of the Coos, Lower Umpqua, and Siuslaw Indians, 1855 - 1984* (2009: University of Nebraska Press) (Particularly Chapter Two).

Like other Oregon tribes, the United States purported to terminate the CTCLUSI in 1954. The United States enacted into law the Coos, Lower Umpqua, and Siuslaw Restoration Act in 1984. Although every other federally-recognized tribe in Oregon received either money or land as a result of restoration, we did not.

Since this fresh start toward self-determination, we have established a casino near Florence in the heart of the northern part of our ancestral territory. Our headquarters are in the North Bend/Coos Bay area in the southern part of our ancestral lands. Today, we number 1,017 enrolled members and provide approximately 600 jobs for Indians and non-Indians alike.

Someday soon we expect to be before Congress seeking to restore tribal control over a painfully thin remnant of our former ancestral lands. Our history makes us uniquely sensitive and uniquely respectful of the aspirations of any tribe to enlarge the tribe's control over their respective ancestral lands. We, least of all, begrudge no tribe that aspiration. We are encouraged by Senator Wyden and Senator Merkely's attention to the aspirations of the Confederated Tribes of Siletz Indians of Oregon (Siletz Tribe) and Confederated Tribes of Grand Ronde (Grand Ronde) to add to their respective land bases. I sincerely acknowledge the fact that the Senators' co-sponsorship of these measures is evidence of their recognition of the importance of land in the life of all tribes.

We have no objections to S. 356. Indeed, we support it and applaud our delegation for helping the Grand Ronde secure their land aspirations in a targeted way that avoids impinging on the interests of any other tribe.

I regret that we must oppose S. 908 as introduced.

S. 908 grants counties unprecedented power over the Siletz Tribe's aspirations to secure land in trust. Under the bill, six Oregon counties have absolute authority to determine whether an application will be subject to the comparatively relaxed standards of an "on-reservation" acquisition or will be subjected to the more exacting scrutiny of the "off-reservation" procedures. This mechanism transforms a question of federal law into a question of local politics. We strongly believe in collaboration and in building consensus with the people and governments of the political subdivisions of our state. We do not believe, however, that it is in the interest of our tribe for Congress to establish a precedent for legislation which cedes control of such a key piece of the federal decision-making process to local authorities.

However, our fundamental objections to S. 908 are independent from the "county veto" provisions and even if those were removed, we profoundly object to S. 908

S. 908 would grant the Siletz Tribe a unique right to claim favorable on-reservation treatment under federal law for all land acquisitions in an area of the Coast reservation that is in fact our ancestral land. Under S. 908, the Siletz Tribe, and only the Siletz Tribe, are entitled to have treated as an on-reservation acquisition all property it proposes for trust within the 800,000 acre Coast reservation. To give the Siletz Tribe favorable treatment with respect to land within the area of overlap is unsupported by law, is historically inaccurate, and is just plain unfair to the people of my tribe.

In *City of Lincoln City v. U.S. Department of Interior*, 229 F. Supp. 2d 1109 (D. Or. 2002), the Siletz Tribe asserted that the Bureau of Indian Affairs's approval of a fee-to-trust transfer of land in the central region of the Coast reservation near but not on the Siletz Tribe's existing reservation lands should have been approved under the "on-reservation" criteria of 25 CFR Section 151.10. In support of its theory, the tribe claimed the geographic area of the Coast reservation established by Executive Order in 1855 as its "former reservation." The Department of the Interior disagreed. It took the position that only the Siletz Tribe's then-current reservation lands qualified for "on-reservation" treatment.

No tribe other than the Siletz Tribe was a party to *City of Lincoln City*. The District Court upheld the BIA's approval under the "off-reservation" criteria -- which subsume the less stringent "on-reservation" standards. Because it had upheld BIA's approval under the more stringent standards, the court did not rule on the tribe's argument that the approval should have been granted under the less stringent "on-reservation" standards.

At least as to the area of overlap between the Coast reservation and our ancestral lands, we agree with the position taken by the BIA in 2002 and disagree with the position asserted by the Siletz Tribe. Simply put, the historical evidence does not support the Siletz Tribe's claim that the area of overlap is any part of that tribe's "former reservation."

S. 908 would bestow on the Siletz Tribe the benefit of the rule the tribe invited the District Court to adopt in *City of Lincoln City*. And yet no tribe other than the Siuslaw ever have inhabited the

area of overlap between our ancestral lands and the Coast reservation. S. 908 gives a tribe with no historic connection to that area a superior claim to lands within that region.

The Siletz Tribe has acquired and holds in fee thousands of acres of land within the area of overlap between the Coast reservation and the ancestral lands of my tribe. The legal effect and fundamental unfairness of S. 908 are made clear by adding two assumed facts to the reality of the Siletz Tribe's ownership of lands within the area of overlap. First, suppose my tribe purchases land adjacent to the lands owned by the Siletz. Second, suppose further that both tribes apply to have their respective lands transferred to trust.

Under current law, both applications would be evaluated under "off-reservation" standards. If S. 908 becomes law, the application by the Siletz Tribe would be treated as an "on-reservation" acquisition whereas our application for the adjacent parcel would be treated as an "off-reservation" acquisition. The Siletz Tribe would be free of the obligation to satisfy the Secretary's escalated scrutiny of acquisitions far distant from the applicant tribe's reservation. If the acquisition were proposed for business purposes, the Siletz Tribe would not be required to provide the Secretary with a plan specifying the anticipated economic benefits of the proposed use. Finally, the Siletz Tribe's acquisition would be processed within 30 days and without notice to state and local governments, assuming that the county opt-in/opt-out provisions of S. 908 are jettisoned before passage.

In contrast, we would be subject to exacting scrutiny by the Secretary, we would be required to provide a business plan, and we would be required to give notice and allow for comment by state and local governments. *Compare*, 25 CFR Section 151.11 ("off-reservation" criteria) (requiring, in addition to all "on-reservation" criteria, scrutiny proportional to distance from reservation lands, business plans, and notice and comment period to local governments), *with*, 25 CFR Section 151.10 ("on-reservation" criteria) (not requiring proportional scrutiny, business plan, or notice and comment period). As the federal District Court put it in *City of Lincoln City*, "land that is within or adjacent to the reservation carries with it a 'presumption' that a fee-to-trust transfer will benefit the tribe, while no such presumption exists for off-reservation land." 229 F.Supp. 2d at 1129.

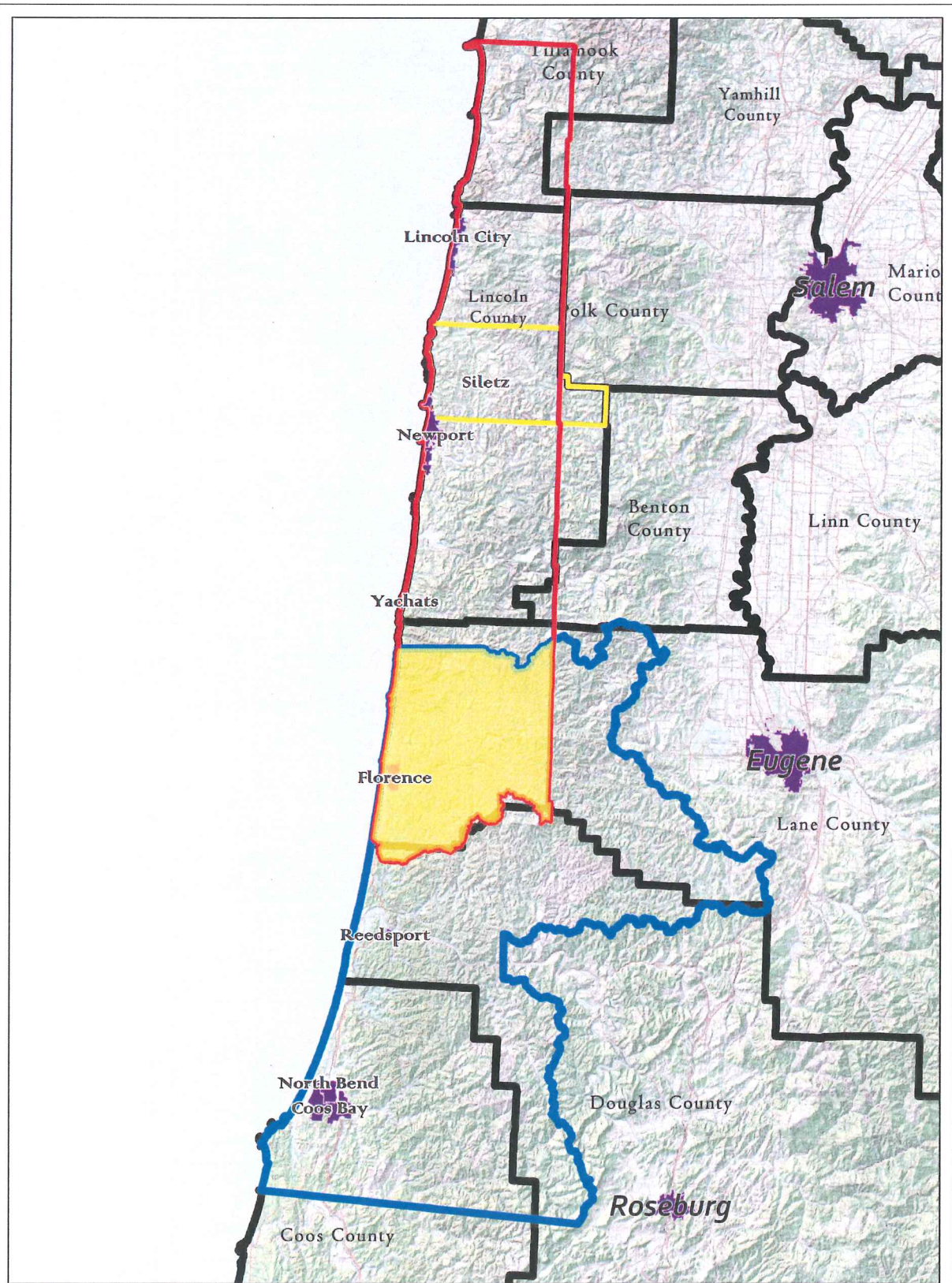
In the hypothetical posed above, my tribe would confront an additional burden arising from S. 908. 25 CFR Section 151.8 states that if one tribe wants to convert land into trust which lies in another tribe's "reservation," the governing body of the tribe "having jurisdiction over such reservation" must give its consent in writing. The Siletz Tribe asserts that its ancestral lands extend south along the Oregon Coast into northern California, north into southwest Washington, and east to the Cascade mountains. *See*, map attached to the prepared statement of Delores Pigsley, Tribal Chairman, Confederated Tribes of the Siletz Indians, page 43 of the record of the December 9, 2009 hearing of the Senate Committee on Indian Affairs, United States Senate. The Siletz Tribe has publicly asserted that "any land transfers/disposals within the original boundaries of the Siletz (Coast) Reservation should initially be offered to the Confederated Tribes of the Siletz Indians." Letter from Delores Pigsley, Tribal Chairman, Confederated Tribes

of the Siletz Indians, to Team Leader, Western Oregon Plan Revisions Office (December 14, 2007).

The bill does not expressly make the area of overlap between the Coast reservation and our ancestral lands Siletz “reservation” land; it only treats the land as such for fee-to-trust applications. But there exists a significant risk that, once armed with S. 908, the Siletz Tribe could persuade a court that our application to take a part of our ancestral land into trust is dependent on the consent of the Siletz Tribe pursuant to 25 CFR Section 151.8. Congress should not give one tribe priority and dominion over land which historically belongs to another.

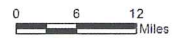
Conclusion

Tribes face many challenges. I strongly prefer that we face them shoulder-to-shoulder and facing in the same direction. I regret the necessity of expressing my people’s heartfelt objections to S. 908 as introduced.



The Coast Reservation and Other Land Boundaries of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Confederated Tribes of the Siletz Indians

- Siletz LCA
- CTCLUSI Ancestral Lands
- Original Coast Reservation
- County
- City
- Overlap between Coast Reservation and CTCLUSI Ancestral Lands



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