

**Testimony of Lisa C. Oshiro, Directing Attorney  
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**respectfully submitted to the  
Committee on Indian Affairs  
United States Senate**

**on S. 550, the American Indian Probate Reform Act of 2003  
and other amendments to the Indian Land Consolidation Act.**

October 15, 2003

Thank you, Mr. Chairman Campbell, for this opportunity to address you and other distinguished members of the Senate Committee on Indian Affairs on S. 550, the American Indian Probate Reform Act of 2003, and other proposed amendments to the Indian Land Consolidation Act. The issues addressed by the Indian Land Consolidation Act and the proposed amendments in S. 550 are very important to preserve the Indian land base throughout Indian Country and especially in California.

## **I. INTRODUCTION**

California Indian Legal Services (CILS), a law firm devoted exclusively to the representation of Indian people and Tribes, submits these comments based upon the collective experience of the firm over a period of thirty-six years. CILS was incorporated in 1967 by public interest attorneys and California Indian leaders. When it was created, CILS became the first non-profit law firm in the history of the United States devoted exclusively to representing the rights of Indian tribes and individual Indians. Over the years, CILS has had remarkable successes – ranging from the creation of the Native American Rights Fund to cases in the Supreme Court, Ninth Circuit, other federal courts and state courts.

CILS has represented most of California's 107 federally recognized tribes during its existence and has served as counsel in many successful cases resulting in the restoration of improperly terminated California Indian rancherias. CILS has also represented many California Indian tribes in their legislative efforts, often successful, to restore their rightful status as recognized tribes. In addition, CILS has represented over 30,000 California Indians in matters such as Indian status, land status, and probate, and CILS has also worked with the Senate Committee on Indian Affairs on numerous policy issues and pieces of legislation. As general counsel to the Advisory Council on California Indian Policy, CILS helped publish the most comprehensive report on the history and status of California Indians ever commissioned by the United States Congress.<sup>1</sup> Our historical role in California Indian affairs provides

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<sup>1</sup>Congress commissioned exhaustive reports that detailed the tragic history and its remaining effects on California Indians. See, Advisory Council on California Indian Policy, Final Reports and

CILS with a clear perspective on how the 2000 amendments would impact California Indians, as well as on how beneficial S. 550 will be for the California Indian community. Moreover, because we have a long history of representing tribes and individuals, CILS understands the sometimes competing nature of individual and tribal interests, and what policies strike a reasonable balance between such interests.

## **II. THE INDIAN LAND AND NATURAL RESOURCE BASE IN CALIFORNIA**

With 107 federally recognized tribes in California, one might expect the Indian land base in California to be substantial. However, the Indian land base in California is extremely small. The reservations and rancherias under the jurisdiction of the Pacific Region Office<sup>2</sup> consist of approximately 400,000 acres of land held in trust for the benefit of California Indian tribes. An additional 63,000 acres of public domain and reservation allotments are held in trust for the benefit of individual California Indians.<sup>3</sup> By contrast, the eighteen unratified treaties between the United States and California Indian tribes would have reserved approximately 8.5 million acres of Indian land in California.<sup>4</sup>

Some federally recognized tribes in California have no tribal land base whatsoever.<sup>5</sup> Many of the reservations and rancherias in California are extremely small: most are less than 500 acres; 22 are 100 acres or less and, of these, 16 are 50 acres or less; seven are 20 acres or less; five are under 10 acres; and four are under five acres.<sup>6</sup> Only 11 California Indian tribes have a land base of over 10,000 acres.<sup>7</sup> This lack of land stems, at least in part, from Congress' failure to ratify negotiated treaties, the termination of California Indian tribes under the California Rancheria Act of 1958, as amended, and

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Recommendations to the Congress of the United States Pursuant to Public Law 102-416, September 1997.

<sup>2</sup> This does not include the three reservations that straddle the California/Arizona border, which are under the jurisdiction of the Phoenix Area Office. Bureau of Indian Affairs, Sacramento Area Office, "Trust Acreage - Summary, CY Ending December 31, 1996."

<sup>3</sup> Id.

<sup>4</sup> See Flushman and Barbieri, Aboriginal Title: The Special Case of California, 17 Pac. L.J. 390, 418 (1986) at 403-404.

<sup>5</sup> See Table 1 to the ACCIP Economic Development Report.

<sup>6</sup> Id.

<sup>7</sup> The ACCIP Trust and Natural Resources Report, at pp. 11-12.

their partial restoration.<sup>8</sup>

### **III. EFFECT ON INDIAN ELDERS IN CALIFORNIA**

CILS urges the Senate Committee on Indian Affairs to complete work on S. 550 as soon as possible. Serving many Tribes and elders, CILS is in a unique position to gauge the effect of the 2000 amendments on the California Indian elder population and we regret to report that the uncertainty occasioned by the 2000 amendments to the Indian Land Consolidation Act has created great distress among California Indian elders. No other recently enacted piece of federal legislation has caused as much anguish and fear among the American Indian community, especially our elders. Since the passage of the 2000 amendments to the Indian Land Consolidation Act, Indian elders in California who possess interests in trust allotments have been under significant stress and discomfort – because the definition of “Indian” and limitations in the probate provisions of the 2000 amendments would have the effect of preventing them from leaving their lands to many of their children, grandchildren, and great-grandchildren. Estate planning and will drafting, which could reduce fractionation and encourage consolidation, are currently complicated by the possibility that the 2000 amendments could limit the ability of elders to leave their trust and restricted interests to their children, grandchildren and great-grandchildren. The S. 550 amendments could restore this ability.

California Indian elders are a remarkable group of survivors. Beyond the ravages of the Gold Rush era, California Indians have survived the unrelenting antipathy, until recent times, of the State of California to its native people, as well as a federal government that seemed intent on terminating their status or refusing to recognize their existence. Despite some of the poorest treatment and the most sordid history native people in the United States have ever experienced, California Indian elders have managed to remain Indian, survive as members of communities they have kept alive and vibrant against all odds, and keep almost one-half million acres of individual and tribal lands in trust. California Indian elders find themselves once again fighting to maintain their existence as Indians and fighting to keep their precious limited land base.

California Indian elders deserve the comfort and the certainty that their precious trust lands will remain in their families and will be passed on to future generations. Moreover, they deserve the right to live out their lives secure in the knowledge that, whether by will or by intestate succession, their lands will remain protected and in trust status. We therefore urge the Senate Committee on Indian Affairs to act quickly and restore confidence and certainty to the trust probate process.

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<sup>8</sup>The ACCIP Historical Overview Report: The Special Circumstances of California Indians,” at p. 5,13; See, e.g., The ACCIP Termination Report: The Continuing Destructive Effects of the Termination Policy on California Indians.”

#### **IV. PROPOSED S. 550 SUBSTITUTE FROM THE S. 550 TASK FORCE**

Since its inception, CILS' number one priority, as identified by the California Indian community, has been the preservation and enhancement of the Indian land base in California. This priority has led CILS to undertake significant efforts to ensure that some of the amendments to the Indian Land Consolidation Act enacted in 2000 be repealed or modified. To that end, CILS has worked closely with the Senate Committee on Indian Affairs since the 2<sup>nd</sup> Session of the 107<sup>th</sup> Congress, on S. 550's predecessor bill, S. 1340; and CILS has served as coordinators, along with organizations such as the Indian Land Working Group and the National Congress of American Indians, for an informal S. 550 Task Force. The S. 550 Task Force, a coalition representing tribal and individual Indian interests, has sought to fashion a fair and effective substitute bill for S. 550 which balances the needs of individual landowners, Indian tribes, and the Department of the Interior. From the day of Chairman Campbell's introduction of S. 550 on March 6, 2003, CILS has assisted in coordinating numerous meetings, drafting sessions, discussion groups, community education forums and the like. As a result of this significant effort by the national Indian community, the S. 550 Task Force has drafted and shared with this Committee a proposed S. 550 substitute bill, which we hope will inform and guide the Committee's current and future efforts on the Indian Land Consolidation Act.

Sometimes we are faced with what appear to be almost insurmountable challenges. Such challenges often require communities to come together and aggressively take on those challenges by making tough decisions which reflect a great deal of deliberation and compromise. Everyone agrees that the current level of fractionation of trust and restricted lands, and the associated management of the fractionated interests, pose massive problems for the owners of such interests (including Indian tribes), the Indian tribes with jurisdiction over such interests, and the Department of the Interior (DOI). S. 550 has provided Indian Country with an opportunity for everyone to be a part of a solution which prevents further loss of trust and restricted lands, promotes the consolidation of fractionated interests in trust and restricted lands so that such lands and their resources (such as cultural and environmental resources) may be protected and/or put to productive use for housing, schools, health clinics, cultural centers, economic development, and other community purposes. The Task Force's proposed S. 550 substitute bill attempts to do all of these things while also respecting and protecting the rights and interests of individual landowners, and preserving and promoting the jurisdiction and sovereignty of Indian tribes.

The Task Force's proposed S. 550 substitute bill reflects an effort to bring together the collective knowledge, experience, resources, and vision of individual owners of trust and restricted interests, Indian tribes, tribal staff, consultants and advocates, Indian organizations, Congressional members and staff, and DOI officials and staff to provide solutions with immediate and long-term benefits throughout Indian Country. Some of the most critical features of the proposed S. 550 substitute bill are: the definition of "Indian;" probate provisions that are more easily understood, and that allow individual landowners to pass their interests to their children, grandchildren, and great-grandchildren; estate planning services that will help slow the fractionation that normally occurs through intestate succession;

and consolidation of highly fractionated parcels through a variety of mechanisms. We strongly encourage this Committee to incorporate such provisions into an S. 550 substitute bill that will become law during this 1<sup>st</sup> session of the 108<sup>th</sup> Congress.

We have made progress in simplifying significant portions of the bill, and acknowledge that some areas remain complicated due to the complexity of the problem itself. Also, while the S. 550 Task Force has reached consensus on many provisions in its proposed S. 550 substitute, there remain areas where Task Force members respectfully disagree with one another and we are committed to continuing to work together to reach resolution of such areas as we move closer to this Committee's final markup of S. 550.

Respectfully submitted,  
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