

**TESTIMONY OF CRIS E. STAINBROOK, PRESIDENT OF THE
INDIAN LAND TENURE FOUNDATION (ILTF)**

Before

THE SENATE COMMITTEE ON INDIAN AFFAIRS

April 30, 2003

**Regarding S. 519, the Native American Capital Formation and
Economic Development Act of 2003**

Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs:

My name is Cris Stainbrook. I am Lakota and I serve as the President of the Indian Land Tenure Foundation (ILTF). The Indian Land Tenure Foundation is a relatively young non-profit organization that was created by a community of Indian people concerned with Indian ownership and management of land. Our mission, as directed by the community, is to strategically work toward a goal of having all land within the boundaries of every reservation and other areas of high significance where tribes retain aboriginal interest in Indian ownership and management.

On behalf of the ILTF Board of Directors and community, I thank you for this opportunity to present some perspectives and thoughts on S. 519 and also provide you with some information about our organization and work.

Four years ago a community planning process began with Indian people that had been working on Indian land issues for many years. The impetus for this planning process was the Community Ventures Program of the Northwest Area Foundation. The Community Ventures Program was designed to allow communities to develop 10-year strategic plans for reducing poverty and provide each community with substantial funding to assist in implementing the plan. In the case of the Indian Land Tenure Community, the Northwest Area Foundation drew the direct connection between the ownership and effective management of land and poverty on many of the country's Indian reservations.

The community planning process took place throughout the eight-state region of the Northwest Area Foundation but involved Indian people from throughout the nation as well. In total, several hundred Indian people participated in the planning process by providing input, writing sections of the plan, and providing comments on the initial drafts. Ultimately, the three-year process culminated in a strategic plan that the community felt would solidify the land holdings of Indian tribes and people, allow a

greater self-determination, and would allow their most basic asset, land, to once again become a source of sustenance.

The community plan describes a course of action for the community to follow. The initial step was to create the Indian Land Tenure Foundation (ILTF), an institution that functions as a community foundation but with a very specific focus on resolving Indian land issues and creating land-based businesses. It is the role of ILTF to recruit resources and distribute those resources in a manner that will effectively accomplish the mission. In certain instances, the Foundation will operate programs when there is a lack of existing land programs in Indian Country.

In addition to the mission statement mentioned earlier, the community identified four strategies for the Foundation and the community to work on. Those strategies include:

- Educate every Indian landowner about land management, ownership and transference issues so that knowledge becomes power when decisions about land assets are made.
- Increase economic assets of Indian landowners by gaining control of Indian lands and creating financial models that convert land into leverage for Indian owners.
- Use Indian land to help Indian people discover and maintain their culture.
- Reform legal mechanisms related to recapturing the physical, cultural and economic assets for Indian people and strengthening sovereignty of Indian land.

The completed strategic plan allowed the Indian Land Tenure community to enter a 10-year partnership agreement with the Northwest Area Foundation. The community agreed to meet a series of benchmarks that included measures regarding the return of alienated reservation lands to Indian ownership and the reduction of the number of undivided interests in the allotments. In return, Northwest Area Foundation provided a grant of \$20 million to the Indian Land Tenure Foundation for operating costs, grants to local tribal efforts, and research and development of new methods to resolve this complex of land issues in Indian Country.

Not surprisingly, many in the community pointed toward, and much of the work of ILTF is directed toward, resolving Indian land issues that arose from two specific federal policies—allotment of the reservations and termination of tribal status. In both cases, substantial land holdings that had been guaranteed by treaties and executive orders for the exclusive use and occupation by Indian people were lost to non-Indian ownership. Through the provisions of the General Allotment Act of 1887 and subsequent Acts, more than 90 million acres of Indian land passed out of Indian ownership. The termination of tribal status led to the loss several million more acres of Indian land.

The loss of this land has created great difficulties for the tribes over the past 115 years. The checkerboard pattern of land ownership on reservations continues to foment jurisdictional battles between the tribes and the states and counties. And, the lost revenue that could be generated from the lost land base is substantial. In the Great Plains Region the tribes lost approximately 5,112,000 acres of land between 1887 and the passage of the

Indian Reorganization Act in 1934. Simply leasing the lost land for grazing and receiving the Department of Agriculture's cash rent estimates for grazing land, the tribes would have received an additional \$51 million in 2002 and nearly \$3.5 billion since 1934. If even one-quarter of the land were leased at the higher cropland rates, the lost revenue in 2002 would be nearly \$100 million.

As devastating as the loss of land has been, the more insidious outcome of the General Allotment Act has been the creation of the undivided interest or fractionated ownership of the Indian allotments. This pattern of ownership has effectively rendered millions of acres of Indian land unused, unmanageable, and in constant jeopardy of being taken out of Indian ownership. This, of course, says nothing of the large administrative costs borne by the federal government and the tribes in maintaining ownership records and distributing income from the allotments to the correct owners.

The Committee members are well aware of the fractionated ownership issues and have heard testimony on several occasions over the past several years about the magnitude of the problem. The total number of interests in the 183,000 existing allotments or tribal tracts now totals more than 3 million. A number of allotments have ownership patterns which are now dividing at exponential rates every few years.

Anecdotally it is estimated that as many as 10 percent of the allotments are either completely unused or illegally used without lease payments to the owners because the properties ownership is so fractionated that tracking is virtually impossible. Beyond this are additional allotments that could be used for relatively advanced economic development but the difficulties in reaching agreement among so many owners remains an impediment. These are particularly distressing conditions when every opportunity for appropriate development in Indian Country is so important.

The cost to the federal government is staggering. Over the past several months, ILTF has tried to estimate the federal administrative costs of managing each ownership record. The best estimate that we could arrive at is \$71 per year per ownership interest. Our discussions with Bureau of Indian Affairs (BIA) field staff suggest that this is an extremely conservative estimate. The costs may well exceed \$100 per interest. The figures would put the total costs of administration between \$213 million and \$300 million per year.

As the Committee is aware, the BIA has operated a pilot project for land consolidation since 1998. While the project has had some qualified success, it is clearly not at a scale that can keep pace with the rate of increase in fractionation of the land ownership. The \$21 million projected for the pilot projects in the next fiscal year is but a drop in the bucket as to what is needed to resolve the problem. To that point, an ILTF consultant recently calculated that it would require \$1.25 billion to buy out all the existing undivided interests throughout Indian Country. This figure should in fact be considered very conservative.

It is in this context that ILTF would agree with the findings outlined in S. 519. The land issues in Indian Country must indeed be resolved if economic development is to occur on a significant scale. And further, that additional capital must be brought to bear to achieve a scope and scale of enough significance to be effective. However, Indian self-determination is a fundamental core value of ILTF and that self-determination is not limited to the political sector but also includes economic aspects. Therefore, while we very much appreciate the intent of S. 519, we do not see the need for the federal government to create the vehicles for investment in Indian Country. The creation of such entities is better left to the Indian communities that can adapt the disciplines of the private capital market to their own cultural settings. This is not to say that there is not a role for the federal government in fostering the economic development and capital investment in Indian Country through the application of monetary resources. Indeed, those resources certainly are important to address some of the failures of the capital market system in Indian Country as they have been in addressing similar failures in other communities.

Indicative of our concurrence with the findings and land-related goals of S. 519 is ILTF's work over the past year to develop a private capital investment mechanism that could be applied to the consolidating of undivided interests and limited recovery of alienated land within reservation boundaries. Through our developing relationship with the Native American Bank Community Development Corporation, the investment mechanism will also include opportunities for private and public capital resources to be brought to bear in the development activities on Indian land. Affordable housing development will be of primary concern initially.

The Indian Land Capital Fund is designed to be an equity investment pool and as such will provide Indian Country with a relatively new model of financial investment in Indian land. To date, most financial investment related to Indian land has been through debt financing. The benefit of the equity investment is that it would help to leverage debt and would allow the Fund to develop more rapidly and larger.

The design of the Capital Fund will incorporate aspects of the BIA's Consolidation Pilot Projects but will be assisted through the application of ILTF and NACDC's non-profit activities including but not limited to estate planning, financial counseling, and technical assistance. Other significant aspects of the Indian Land Capital Fund include:

- Initially capitalized through a combination of philanthropic, tribal, government and private sources.
- Allows the tribes to own title to their land.
- Will work with all holders of undivided interests not just those with less than 2 percent interests to prevent further fractionation from occurring.
- Provides for a network of local sites that receive common technical assistance and training.
- Makes provisions for recognizing the individual ownership rights of Indian people and provides technical assistance and guidance in consolidating undivided interests while preventing future fractionation of ownership.

- Allows Indian people and tribes to build ownership interests in the investment pool.
- Adds value to the land through development.
- Becomes a long-term, self-sustaining, for-profit concern.

The financial vehicle we are proposing and constructing will not be without cost to the federal government. Indeed the undivided interests of Indian Country are of the federal government's making and it will need to provide resources to resolve that problem. However, the Capital Fund that is being created will be able to leverage between 5 and 10 dollars of philanthropic, tribal, or private capital to every federal dollar. Federal contributions to the Capital Fund could come in several forms including the provision of seed capital, tax credits for investors, or a program similar to the Energy Savings Performance Contracts found in the recent energy bill. In the case of the latter, it would be the savings that accrue to the BIA administrative costs that could be shared with the Indian Lands Capital Fund. When successfully implemented, the mechanism would provide a scale of activity in reducing fractionated ownership throughout Indian Country that the BIA is unable to achieve with the current budget allocations for the Consolidation Pilot Projects.

We have had some very preliminary conversations with the BIA and several tribes regarding the Indian Land Capital Fund. It is our intention to continue those discussions with the intent of obtaining at least some portion of the funds dedicated to the Pilot Projects for next fiscal year for the partial capitalization of the Capital Fund. If successful in obtaining these funds, the Indian Land Capital Fund will become operational during the Fall of 2003 at a minimum of four tribal sites.

Ultimately, we believe this model investment program will return decision making and control over their land asset to the tribes and Indian people. Currently the control and management of the asset is subjected to changes in federal policy, law and regulations. These changes seemingly are driven more by exasperation and expedience to resolve the overwhelming size and growth of the fractionation problem rather than resolving the problem with the welfare and concerns of Indian people in mind.

Thank you for the opportunity to appear before you today and have this discussion. The bill that is the subject of today's hearing has appropriately targeted two significant issues in the economic development of Indian Country—lack of investment capital and broadly applied analysis of the impediments. The Indian Land Tenure Foundation stands ready to assist the Committee and Congress in pursuing the goals of S. 519 through the Indian Land Capital Fund and our many other activities.