



CALIFORNIA INDIAN LEGAL SERVICES

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Dorothy Alther, Executive Director

March 17, 2014

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Big Lagoon Rancheria v. State of California, Appeal Nos. 10-17803 and 10-17878

Dear Ms. Dwyer:

California Indian Legal Services (CILS) on behalf of itself and the California Association of Tribal Governments requests leave to submit this letter as an *amicus curiae* in support of the Big Lagoon Rancheria's (Tribe) petition for panel rehearing or rehearing *en banc*. CILS encourages the Court to grant the Tribe's petition in order to correct several errors made by the panel majority in its January 21, 2014 decision.

CILS is one of the oldest non-profit law firms in the country devoted to the rights of Indian tribes and individuals. Since CILS's founding in 1967, it has represented nearly all of the 110 federally-recognized Indian tribes in California. In light of our past and current representation, we are deeply concerned by the harm many tribal communities will face should the panel's decision stand – not just to economic enterprises, but conceivably to any use of tribal lands, and ultimately to their future viability.

This letter addresses only one of the errors detailed in the Tribe's petition – an error which allowed the State of California to avoid the applicable six-year statute of limitations and make a collateral attack on the Department of Interior's (DOI) 1994 decision to take land into trust for the Tribe. The error lies in the majority's assumption that "[t]he 1994 entrustment, standing alone, might not have caused the State [of California] any concern."¹

In so holding, the majority concluded that the statute of limitations did not begin to run in 1994, but instead years later when the Tribe brought a civil action against the State for failing to engage in good-faith gaming compact negotiations. The majority's assumption demonstrates a misunderstanding of the general nature of fee-to-trust land acquisitions, as well as the factual history of the 1994 entrustment.

¹ *Big Lagoon Rancheria v. State of California*, 741 F.3d 1032, 1043 (9th Cir. 2014).

California, like most states, has reason for concern anytime a change in land title could result in loss of state authority over the land – an automatic result when land is taken into trust for an Indian tribe. Some common examples are the losses of regulatory authority,² real and personal property tax revenue,³ personal income tax revenue,⁴ and sales and use tax revenue.⁵

There is no question that the State had concerns about the 1994 entrustment. CILS represented the Tribe in an administrative appeal challenging the entrustment.⁶ The State participated as an *amicus curiae* in that appeal, filing two lengthy briefs in 1997 which sought to overturn the entrustment but which were unsuccessful.

The 1994 entrustment was an agency action by DOI which applied to the State in 1994. The State had its chances to challenge that entrustment, and made use of those chances. Allowing the State to challenge the entrustment yet again, in disregard of fundamental principles of administrative agency appeals, will create serious instability for many tribes which have invested in building their communities on land taken into trust by DOI decades ago. CILS and the thirty-two tribes which compose the California Association of Tribal Governments strongly support the Tribe's request for a panel rehearing or rehearing *en banc*.

Respectfully submitted,

/s/ Dorothy Alther
Dorothy Alther
Executive Director
California Indian Legal Services

² *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) [state civil/regulatory laws generally inapplicable, including state and local gambling laws]; *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (1976) [local zoning ordinances]; Cal. Fish & Game Code § 12300 [state hunting and fishing laws]; 28 U.S.C. § 1360 [state authority to decide inheritance, ownership, or possession of trust lands].

³ 25 U.S.C. § 465 [taxes on real property]; *Confederated Tribes of Chehalis Reservation v. Thurston County Bd. of Equalization*, 724 F.3d 1153 (2013) [taxes on improvements to real property]; *Bryan v. Itasca County*, 426 U.S. 373 (1976) [taxes on personal property].

⁴ *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973).

⁵ *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980); 18 Cal. Code of Regulations § 1616.

⁶ Plaintiff and Appellee/Cross-Appellant's Petition for Rehearing and Panel Rehearing *en banc*, at p. 8.

9th Circuit Case Number(s)

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United States Court of Appeals for the Ninth Circuit

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The following transaction was entered on 03/17/2014 at 6:49:55 PM PDT and filed on 03/17/2014

Case Name: Big Lagoon Rancheria v. State of California

Case Number: [10-17803](#)

Document(s): [Document\(s\)](#)

Docket Text:

Filed (ECF) California Indian Legal Services and California Association of Tribal Governments Motion to become amicus curiae. Date of service: 03/17/2014. [9019517] [10-17803, 10-17878] (DAA)

Notice will be electronically mailed to:

Mr. Bruce H. Jackson, Attorney
Mr. Peter Engstrom, Attorney
Mr. Peter H. Kaufman, Deputy Assistant Attorney General
Kate Rochelle Bowers, Attorney
Mrs. Dorothy Ann Alther, Senior Attorney

The following document(s) are associated with this transaction:

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