TESTIMONY ON S. 550, THE INDIAN PROBATE REFORM ACT OF 2003
Before the Senate Committee on Indian Affairs

SUBMITTED BY THE
INDIAN LAND WORKING GROUP

PRESENTED BY AUSTIN NUNEZ,
CHAIRMAN OF THE INDIAN LAND WORKING GROUP
October 15, 2003

The Indian Land Working Group ("ILWG") thanks the Committee for its invitation to appear and provide testimony concerning further proposed amendments to the Indian Land Consolidation Act.

We have attached to our written testimony four appendices: (1) An overview of fractionation, Indian probate, ILCA and trust reform, (2) a copy of a draft uniform probate code prepared by our organization, (3) our prior testimony submitted May 7, 2003 and (4) a chart entitled "Addressing Fractionation."

I. HISTORICAL FACTS

I begin my testimony by referencing important historical facts:

1. DOI'S HISTORICAL RECORD IS NEGATIVE.

The Department of Interior has never properly administered the allotted land base. The 1996 Cobell suit could as easily been filed in 1913 when the department had a probate backlog of 40,000 cases involving estate assets worth $60 million dollars.

2. THERE HAS BEEN NO TRUE EFFORT TO MANAGE ALLOTTED LANDS.

The federal government has, in fact, spent less time and money attempting to manage allotted lands than it has devising methods of getting out from under the burdens associated with its role as trustee.

3. ELIMINATION NOT MANAGEMENT OF ALLOTTED LANDS WAS DESIRED.

During the peak in the allotment period (1916-1921), forced fees were issued as fast as land was being allotted.

That fact was cited as a departmental accomplishment.

4. THERE IS A LONG HISTORY OF INADEQUATE APPROPRIATIONS.

WW I produced reduced Indian appropriations. So did the Great Depression which immediately followed.

On the heels of the depression, WW II ensued. It again constricted Indian appropriations.

WW II was followed by aggressive Termination in which Indian tribes and lands were eliminated for the government's fiscal benefit.

5. OVER TWO DECADES OF RECENT BUDGET STAGNATION.

After a 5-year boom in the 1970s early self-determination era, budget stagnation again set in, as documented by recent Tribal Priority Allocation studies.

6. FRACTIONATION WAS WORSENED BY INADEQUATE SYSTEMS.

Eras of budget and program constriction have produced the chaotic conditions in the allotted land base and fostered uncontrolled fractionation.

At no time did the government inform landowners of the need to avoid fractionation by Indian estate planning.

Estate planning would, at any point, have been a very cost effective way of helping curb the growth of fractionation.

7. INEFFECTIVE NOVELTY EXPERIMENTS WERE USED IN A QUEST FOR A CHEAP FIX.

In 1983 and 1984, the government looked only to legal experiments to make fractionation go away cheaply.

The vehicle selected twice, the "2% rule," was a costly and abject failure.

8. TRUST REFORM IS LITIGATION- AND BUDGET- DRIVEN.

Since 1996, all trust reform measures have been litigation-driven and have done little to address the actual needs of Indians.

The most ironic feature of trust reform is that in an era of decreased central government, Indians have been given double bureaucracies (OST and BIA) to siphon off funds needed for vital community programs.

Despite double bureaucracies, the probate backlog has grown.

9. ILCA 2000 WAS DISASTROUS.

A low point in reform occurred on November 7, 2000. On that date, the devastating amendments to the Indian Land Consolidation Act were passed.

The legislation was incomprehensible. Its extraordinarily narrow definition of "Indian" unleashed widespread panic in Indian Country that, in turn, produced a tidal wave of fee patent applications. This consequence defeated one of the Act's primary goals—enhancement of tribal sovereignty.

II. PROGRESS

I quote from the overview attached to the testimony:

"For the first time in the history of ILCA, it is now possible to say that genuine progress has been made."

"Current proposals do not, as past ones have, assume that landowners will bear sole sacrifice for fixing a problem about which the government dropped the ball and made worse by reducing its performance capability at the time the problem of fractionation was exploding."

III. NO REALISTIC QUICK FIXES

It is important to reiterate a remark made by an Interior witness at the May 7, 2003 hearing.

> There are "no quick fixes to the problem of fraction." This has *always* been the ILWG's position.

IV. ILWG SUPPORTS

The ILWG supports the implementation of a steady, long-term, adequately funded program of:

- Tribal and individual consolidation and acquisition of fractional interests
- Reasonable inheritance limitations using standard and accepted principles of law
- Life estates to avoid loss of trust status of allotted lands
- Permanent enhancement of individual estate planning capability to reduce fractionation
- A proper definition of Indian
- Adequate landowner access to information about their own lands
- The elimination of experimental estates in land that have no foundation in known law
- Amendments that are written in a style comprehensible to the users
- True consultation with interests directly affected by trust reform measures
- The ability of landowners to engage in owner-management of parcels if all owners agree
- Grants to legal services agencies to provide services to landowners and tribes for probate, estate planning and code writing activities

- A well-thought out and carefully structured family and private trusts pilot project that protects against overreaching by third parties and preserves trust status

- The inclusion of tribes in the land acquisition pilot project and adequate funding for acquisitions

- A secretarially-maintained recording system for tribal inheritance codes which are encouraged under ILCA.

- The establishment of missing persons investigation systems with appropriate unclaimed property provisions tailored for small accounts and, possibly, small or highly-fractionated land interests.

- Abandonment provisions are supported only to the extent that genuine efforts are made to locate the true owners.

V. ILWG DOES NOT SUPPORT:

The ILWG does not support the following measures in or associated with S. 550 and trust reform.

- Purely litigation-driven reform processes that have as their primary goal the avoidance of burden to the trustee without commensurate benefit to the landowners and tribes (E.g.'s intestate joint tenancy, improper restraints on alienation of joint tenancy interests and passive trust interests)

- At this time, the inclusion of partitionment provisions in the ILCA amendments proposed under S. 550 until the reasons for partitionment's devastating effects are studied in those regions where partition has been widely used (E.g. Eastern Oklahoma) and eliminated in the legislative proposal

- Land performance Contracts with contractor payment tied to savings to the government since, as with HMOs, the correlation could create an institutional conflict of interest that operates against the interests of the actual holder of the property right

- S. 550 or S. 550 Substitute's intestate untested descent pattern [i.e. descendants, followed by siblings, then, parents] that does not

follow inheritance based upon degree of consanguinity (relationship). The consequences of the novel structure are not known and have not been examined for unintended consequences.

& In the S. 550 Substitute's descent provisions, the non-specification of a spousal life estate share size when the decedent is survived by Indian issue

& In the testate provisions, forced shares for spouses and children in existence at the time of the testamentary act; the provision nullifies the purpose of will making

& The succession provisions' rules of construction and interpretation as written. They need to be re-worded in plain language

VI. ILWG CONCERNS

The ILWG is specifically concerned about the following:

& ILCA 2000's expansion of gift deeding or provisions for deeding at less than fair market value to promote land consolidation in ILCA are being used to by-pass land sale requirements in certain regions. This problem requires prompt evaluation and corrective action.

& All legislative proposals involving ILCA to date and related reform processes have been done without benefit or perceived need for prior data development or resources studies.

The consequences are inadequate data are self-evident.

At least 1/3 of the Indian population was rendered non-Indian by ILCA 2000. Actual existing Indian owners of trust lands were rendered non-Indians holding trust interests. The trust status of California and other public domain allotments was imperiled not only by the definition of Indian but by off-reservation descent provisions.

Hard data is needed for each allotted area so that the impact of particular reform measures can be ascertained.

Such information should include but is not limited to: How many allotments were made, the authority for allotting, when allotting occurred. For each reservation, the tribes to whom allotments were

made and whether allotting was on or off reservation. If off-reservation, whether any tribe asserts jurisdiction. If on reservation, whether more than one tribe asserts jurisdiction. The amount of tribal land in relation to allotted land for each allotted reservation or area. The number of allotments for each tribe still in trust status. The number of owners in each allotment of trust/restricted and fee interests. The uses for which the lands may be developed which also has bearing on value.

The routine federal response when pressed to develop base data is that the legislative and trust reform processes cannot be held up to develop such data.

This is the equivalent of saying that it is a mistake to defer house construction merely because no foundation has been laid or framing erected.

There is nothing to prevent the data from being compiled rapidly by the Department of Interior since all information is readily available through BIA's Land Titles and Records Offices, BIA agency offices and records BIA possesses for each of the allotted tribes.

In fact, the Department cannot possibly perform trust fund accounting without having the data compiled, especially as to the numbers of allotments for each area and numbers of owners. Why Interior doesn't know that is unclear.

& Specific concern exists regarding the lack of safeguards and provisions for review of ILCA 2000's geographic unit valuation processes used for assigning land values to fractional interests slated for acquisition.

& Specific concern also exists about inadequate protections for landowners in partitionment where incidents of value could be peeled off leaving remaining owners with a devalued resource. The partitionment processes in S. 550 and the substitute contemplate situations in which certain interests aren't susceptible to partition and may not be disposed of by partitionment by sale.

& Significant concern is noted about comments reported to have been made by the Special Trustee regarding burdening IIM accounts

with administrative fees in order to consume or "confiscate" the accounts rather than effectuate actual distribution to the owners.

& Similar concerns are present about remarks widely attributed to the Special Trustee that allotted lands should go to fee simple or be sold on the court house steps referencing sharp practices that produced massive allotted land loss in Eastern Oklahoma.

& There is also evidence that OST officials do not understand the correlation between probate reform and trust fund accounting and distribution issues.

Certain high-level officials, despite the Department's own Heirship Task Force studies, appear to oppose a Uniform Probate Code. They are said to favor trust reform, first, oblivious to the correlation between the determination of title and trust fund distribution.

At a minimum, 92% of all titles to allotted lands are transferred in probate. Ascertainment of account distributees is largely a function of probate. Simplification through uniformity of applicable inheritance laws is essential to trust reform

& A major concern is also present that the federal government, in light of recent supreme court cases, has not declared allotted land consolidation, acquisition, regulation and inheritance preempted subject matters for which there is no room for involvement by non-federal or tribal interests. Unless the subject matters are so declared, the federal goals of fractionation resolution and trust fund accounting could easily be impaired.

VII. CONCLUSION

The ILWG suggests that S. 550's substitute be streamlined to enact those provisions that are critical to repairing the problems created by ILCA 2000 and the numerous provisions about which there is general consensus.

Action should be deferred on provisions that warrant further study or raise serious legal questions.

ATTACHMENT #1:

BRIEF HISTORICAL OVERVIEW OF FRACTIONATION, PROBATE, ILCA AND TRUST REFORM
(Prepared by S. Willett, September 2003 for the ILWG)
13th Annual Indian Land Symposium

Indian Country is at the threshold of a new century and millennium. One-fifth of its land base is shackled by the residue of a malformed but enduring policy experiment that that had no chance of working under any set of assumptions. Allotting like most federal Indian policies was designed primarily to ensure that Indians would no longer be cared for by the federal government. What it produced was demographic collapse for Indians nationwide.

Allotting did not spontaneously combust upon Indian Country in 1887. By 1863, allotting had been around for more than 60 years. Between 1850 and 1860, 8,595 patents for and certificates of allotment were issued. In 1875, homestead privileges were extended to Indians.

Despite the fact that inheritance accounts, today, for at least 92% of allotted interest title transfers and probably 100% in the early years of allotting, no formal authorization for probate of allotments existed for nearly a quarter of a century after the General Allotment Act of 1887 was passed. Presumably, the reason for the omission was that the lion's share of allotments were to lose their trust or restricted status in 25 years. At that point, the Indian problem "was to melt away like the snow in the spring" according to Henry Dawes the architect of allotting.

When provisions were finally enacted in 1910 (25 USC §§ 372 and 373), it was not for the benefit of Indians. Formal process was instituted at the instance of people who acquired Indian allotted interests. They demanded a system that assured the integrity of their title.

Prior to 1910, the department handled probate in an ad hoc way. The power to probate was inferred from the requirement of the General Allotment Act that the Secretary convey a patent to the heirs.

Despite the 1910 formalization of probate processes, in 1913, Commissioner Cato Sells reported 40,000 heirship cases awaiting

determination. The estates were collectively valued at $60,000,000. The Department of Interior has never adequately handled its probate function.

More time has, in fact, been devoted in figuring out how to get rid of having the responsibility for Indians than developing and implementing adequate procedures for performing the government's responsibilities to Indians.

Throughout the 20th century, the issue of heirship (fractionation) was periodically raised as a matter that needed to be addressed. No action taken. On January 12, 1983, after the proposal had circulated in the Department for a period of years with technical experts opposing the 2% provision, the Indian Land Consolidation Act was passed.

Its principal features were: authorization for tribal land consolidation plans, authorization of fair market value acquisitions by tribes and the 2% rule.

Of these provisions, only the 2% rule was actively implemented because it was built into the probate system. The 2% rule was the cornerstone of ILCA. It required no additional appropriations to implement and accomplished transfers of interests from decedents' estates to tribes for no compensation.

Recognizing limitations and inequity in the 2% measure as enacted in 1983, § 207 containing the 2% rule, was amended on October 30, 1984.

The 1983 version was struck down by the supreme court in Hodel v. Irving, 481 U.S. 704 (1987). The 1984 amendment was invalidated in Babbitt v. Youpee, 519 U.S. 234 (1997)

Despite two resounding rejections of the rule--with Justice Scalia asking the government at oral argument in Youpee why it was back, since the court had already decided this issue--a third version of the 2% rule was formulated.

The push dissolved when Congress came up with perceived better mouse trap: the Indian Land Consolidation Act Amendments enacted November 7, 2000.

These amendments unleashed a furor in Indian Country that has not abated and will not until its most heinous features are eliminated.

ILCA 2000's primary features are: a significantly narrowed definition of Indian, limited inheritance, an experimental intestate joint tenancy provision,

a secretarial pilot project and establishment of a fund for land acquisition, new consent requirements for transactions, long-awaited provisions giving landowners rights to information about their own land holdings which had previously been denied in many areas, tribal partitionment processes and authorization for landowners to engage in land consolidation transfers in probate.

The criticisms of ILCA 2000 were that the act orphaned large populations of Indians, was incomprehensible to all who attempted to use or explain it, had too many different effective dates and interfered with the ordinary expectations of the average landowners, to name only a few.

Reports were received from throughout Indian Country that landowners were in a panic. NCAI went on record saying that, while the amendments were well intended, they went too far. Landowner groups opposed them as harmful and extremely damaging. Interior shared all the same concerns.

As a result of the widespread negative reaction to ILCA 2000, the drafter of ILCA 2000 developed another set of amendments to ILCA. That proposal, S. 550, suffered from many of the same problems that ILCA 2000 did. In certain respects [e.g. passive trust interest provisions], it made problems created in the 2000 ILCA amendments worse.

It was widely opposed in May 2003 during testimony on the bill before the Senate Indian Affairs Committee. *See* ILWG Testimony Re S. 550 for a full discussion of problems associated with the proposal.

A working group was formed to address fractionation reform. It consists of representatives from landowner groups, tribes, individual landowners, legal services and national Indian organizations.

The hearings showed that there has been a narrowing of differences among the groups and strong unified opposition not only to the most devastating features of ILCA 2000 but also to S. 550 as introduced.

A series of meetings and telephone conferences have been held by the working group. Work assignments have been made and discussions, problems and issues hammered out.

For the first time in the history of ILCA, it is now possible to say that genuine progress has been made. Current proposals do not, as past ones have, assume that landowners will bear sole sacrifice for fixing a problem about

which the government dropped the ball and made worse by reducing its performance capability at the time the problem of fractionation was exploding.

No interest group will get everything they want. However, new provisions will permit Indian people to benefit their families in an ordinary way without having their children and grandchildren of Indian blood (approximately 65% of all inheritance) cut out because someone has altered their status as Indian as a gimmick to further the government's fiscal and administrative interests at the expense of people to whom a trust responsibility is owed.

As to those measures that the ILWG considers lethal. It will continue to fight till the last dog dies to prevent the passage of any measure considered destructive to Indians. ILWG will continue to fight for reform as a function of fixing fractionation reasonably and fairly, not simply shifting the burden to tribes and landowners to get the government off the hook.

ATTACHMENT #2

UNIFORM INDIAN PROBATE CODE
Proposed by the Indian Land Working Group
May 7, 2003

SEC. 501. APPLICABILITY.

(a) IN GENERAL.-

(1) APPLICABIILTY TO TRUST OR RESTRICTED LANDS.- Except as provided in Section 501(a)(2), below, this title shall apply to all Indian trust or restricted allotted lands administered by the United States, except those of the Five Tribes of Oklahoma, the Osage Tribe and in Alaska, and to federally administered personal assets, including IIM and judgment funds.

(2) ELECTION.- A tribe may elect to be exempt from the requirements of this code by issuing a formal resolution of its election not to be covered and, thereafter, filing the resolution with the Secretary of Interior.

(h) NOTIFICATION.- Upon receipt of a formal resolution from a tribe, the Secretary of Interior shall immediately notify local Indian agencies of the Bureau of Indian Affairs and all tribes of the resolution.

(i) LIST.- Annually, the Secretary of Interior shall publish an updated list of tribes that have filed formal exemption resolutions with the Department of Interior. The list will show the date upon which the tribal action was taken.

(j) RULE OF CONSTRUCTION.- Nothing in Section 504 is intended to supersede any tribal succession law that became effective before the date this code was passed.

(k) OTHER LAW.- The trust preservation provisions set forth in Section 502 shall not preclude the application of any other federal law relating to inheritance. Nothing in this section shall be construed to prevent the application in probate of a more restrictive inheritance requirement under tribal law.

(l) SPECIAL LAWS.- A tribe may enact laws relating to inheritance to apply to the lands under its jurisdiction instead of the laws set forth in this code. Upon approval by the Secretary, a tribe's inheritance laws shall supersede the provisions of this code as to that tribe.

(m) COMPILATION.-

(1) Upon approval, the Secretary of Interior shall directly notify each Indian agency and tribe with a probate contract or compact that the enacting tribe has promulgated an inheritance code and its effective date. Notification to the same parties is also required for changes or amendments to tribal inheritance laws.

(2) The Secretary of Interior shall maintain a compilation of all tribal inheritance laws that apply to trust or restricted assets, including changes or amendments to inheritance laws.

(3) The compilation will indicate the date of enactment and the date of approval by the Secretary of Interior, if applicable.

(4) Tribal inheritance laws based upon special statutes will list the public law number, the statute-at-large citation and date of enactment.

(5) Tribal purchase options based upon statutes will list the same information listed in (g)(4) and, where applicable, the Code of Federal Regulations citation.

(6) The compilation of tribal inheritance laws will be updated annually. Publication will be in the Federal Register on February 1.

SEC. 502 PRESERVATION OF TRUST STATUS.

To give effect to the stated purpose of the Indian Land Consolidation Act, as enacted and amended, of the preserving trust status of existing Indian lands, with respect to the probate of allotted lands after the date of enactment of this code-

(a) Inheritance by non-Indians is limited to the receipt of a life estate.

(b) Non-Indian heirs-at-law shall receive a life estate in the amount of an intestate share as determined by reference to applicable law. The remainder passes to the next Indian heirs in line of intestate succession.

(c) Eligible non-Indian devisees receive a life estate of the same size as the share devised to them under the will. Devisee eligibility is established in Section 503, below.

(1) The remainder will pass to the contingent beneficiary, first, or co-beneficiaries, second, if either has been named for the interests devised to a non-Indian.

(2) If no contingent beneficiary has been named or no co-beneficiaries exist, the remainder passes under the residuary clause of the will.

(3) If there is no contingent or co-beneficiary(ies), residuary clause or beneficiary named in the residuary clause, the remainder passes at law to the next Indian heirs as determined by applicable laws of intestate succession.

(h) Nothing in this code prevents conveyance of an interest in trust or restricted lands to a non-Indian.

SEC. 503. ELIGIBLE WILL DEVISEES.

IN GENERAL.- No person shall be entitled to receive an interest in trust or restricted lands covered by this code except as provided below:

(a) Eligible devisees are:

(1) The decedent's heirs-at-law, lineal descendents or relatives of the first or second degree. An exception to this limitation is specifically set forth in subsection (b), below;

(2) Members of the tribe with jurisdiction over the lands devised, or

(3) The tribe with jurisdiction over the devised lands.

(h) SPECIAL RULE.- A testator who does not have a potential devisee from among the classes of eligible devisees listed in Section 503(a)(1),(2) or (3) may devise his or her estate or specific assets thereof to any person related

by blood subject to the trust limitations set forth in Section 502(a) through (c).

(i) JOINT TENANCY.- The devise of a single interest in an allotment to multiple beneficiaries shall be construed as a joint tenancy with a right of survivorship.

SEC. 504 INTESTATE SUCCESSION.

(a) IN GENERAL.- Subject to the provisions of Section 502, above, when an Indian owner of trust or restricted assets covered by this code, including federally administered personal assets, dies without a will, the surviving spouse is entitled to a one-third life estate in all assets of the estate.

(1) The remainder passes as described in (b) through (e), below.

(2) If the decedent is not survived by a spouse, the assets of the estate descend in accordance with (b) through (e) below.

(h) Non-spousal shares: The order of inheritance when there is no will for persons other than the spouse is as follows:

(1) The decedent's children each receive an equal share. If any are deceased, each deceased child's share descends to his or her issue by right of representation. Right of representation means that the lineal descendents stand in the place of their immediate deceased ancestor and share equally that individual's relative share of the estate.

(2) If there are no surviving children or issue, estate assets descend to the decedent's parents in equal shares. If only one parent is living, estate assets pass to the living parent.

(3) If the decedent is not survived by children or their issue or parents, the assets of the estate descend to the decedent's siblings without right of representation. Half-siblings are treated the same as whole siblings.

(4) If the decedent has no close family heirs under (b)(1), (b)(2) or (b)(3), estate assets descend to the tribe with jurisdiction over the interests owned by the decedent.

(h) In accordance with such rules as the Secretary of Interior may prescribe a co-owner may prevent acquisition of an interest in an allotment by the

tribe under (b)(4) by direct purchase of the interest from the estate during probate. Notice of potential tribal descent will be provided to co-owners by appropriate means.

SEC. 505. CHANGED MARITAL CIRCUMSTANCES.

(a) Spousal Share.- As qualified by Section 505(b), below, when an Indian testator marries after having executed a will, the surviving spouse shall receive a life estate to the extent of a spousal intestate share as determined by applicable law.

(b) The surviving spouse shall not receive a life estate if any of the following conditions are present:

(1) The will evidences a clear, permanent intention not to benefit persons beyond those listed in the will regardless of changed circumstances.

(2) The will was made in contemplation of the marriage.

(3) Separate provision has been made for the spouse outside the will.

(h) Divorce or Annulment.-

(1) An individual who is legally divorced from a decedent or whose marriage
has been finally annulled cannot inherit by prior devise any portion of the trust or restricted estate of a deceased Indian. Devises to such individuals are treated as revoked as of the date the divorce or annulment was final including degrees subsequently entered *nunc pro tunc*.

(2) The property that is the subject of a revoked spousal devise passes first, to any contingent beneficiary for the devise named in the will; if none, then to co-beneficiaries in the same devise, if any. If neither is named, the property passes under the residuary clause of the will. If no residuary gift is made, the property passes at law as determined by Section 504, above, or any applicable tribal code.

SEC. 506. PRETERMITTED CHILDREN. If an Indian testator executed a will before the birth or adoption of a child as recognized by 25 U.S.C. 372a or Section 507 of this code and non-provision for the afterborn or after-adopted child is the product of inadvertence rather than an intentional exclusion, such afterborn or after-adopted child shall receive an intestate share of the estate as a life estate to prevent fractionation or further fractionation of devised estate assets.

SEC. 507. RECOGNIZING CUSTOM ADOPTIONS FOR ALASKA NATIVES. Any Alaska Native who considers him- or herself to have been adopted by custom by a deceased allotted landowner and who has not previously had a reason to obtain legal recognition of the adoption may present an affidavit in probate claiming an adoptive relationship to such decedent for purposes of inheritance. If affected heirs do not dispute the relationship or the evidence after record development supports the affiant's claim of adoption by relevant custom, the individual alleging custom adoption may inherit the same share as he would inherit if he were legally adopted by any method recognized in 25 U.S.C. 372a. [as corrected]

SEC. 508. FEDERAL PREEMPTION. Indian probate, allotted land management, leasing, taxation and regulation, allotted land consolidation, including anti-fractionation measures, and all logically related matters are federally preempted subject matters. Nothing in this section shall prevent delegation of duties by the United States to tribes under contracts or compacts under existing law.

SEC. 509. EXISTING OWNERS OF TRUST OR RESTRICTED LAND AND LINEAL DESCENDENTS OF DECEASED LANDOWNERS.

(a) Notwithstanding any other provision of law or the Indian Land Consolidation
Act Amendments of 2000, individuals of Indian descent who have previously inherited trust or restricted lands in probate proceedings conducted by the United States under the authority of 25 U.S.C 372 and 25 U.S.C. 373 are declared to be Indian for land management and administrative purposes from November 7, 2000 and after.

(b) Notwithstanding any other provision of law or the Indian Land Consolidation Act Amendments of 2000, lineal descendents of deceased Indian landowners are affirmed to be Indian for purposes of inheritance, land management and administration purposes from November 7, 2000 and after.