

**STATEMENT OF THE CONFEDERATED TRIBES OF THE WARM  
SPRINGS RESERVATION OF OREGON BEFORE THE INDIAN LAW  
AND ORDER COMMISSION**

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**I. INTRODUCTION**

The Confederated Tribes of the Warm Springs Reservation of Oregon (“Warm Springs Tribe” or “Tribe”) wishes to focus its comments on two issues: our experiences and some of our concerns regarding implementation of the 2010 Tribal Law and Order Act (“TLOA”), and the need for further Federal and Congressional action regarding the enforcement authority of tribal police officers.

**II. WARM SPRINGS SUPPORT FOR TLOA**

First, regarding the promise of the TLOA: Warm Springs was very supportive of this important legislation as it was introduced and worked its way through Congress to eventual enactment. We were very encouraged by the many provisions of the legislation that promised to strengthen tribal law enforcement and judicial systems, and thus finally address the very serious and long standing public safety problems in Indian country. Given the limits on federal enforcement, we agreed with the TLOA’s focus on increasing the authority of tribal courts in terms of enhanced (one to three years) sentencing authority and plans for improved BIA and tribal correctional facilities able to accommodate long term incarceration of tribal prisoners.

### III. LACK OF FUNDING FOR IMPLEMENTATION OF TLOA

However, Warm Springs, like almost all other tribes, lacks the resources to make the necessary improvements in our Tribal Justice system and in the Warm Springs BIA correctional facilities to take advantage of these opportunities under TLOA. Simply put, these enhanced sentencing and enforcement opportunities will remain empty promises unless the Federal Government provides tribes with the necessary financial and other resources to meet the TLOA's requirements for enhanced sentencing and long term incarceration. The TLOA has been on the books for over a year now and we have seen no evidence that federal resources will be coming our way to begin implementing enhanced sentencing and incarceration authority. In fact, the Warm Springs jail, which was constructed over thirty years ago by the Bureau of Indian Affairs, was found several years ago to be out of compliance with current standards in terms of juvenile detention, resulting in the incarceration of Warm Springs juvenile offenders at a State of Oregon juvenile detention facility one hundred miles away. The Warm Springs jail, which was built only in response to potential litigation, has outlived its twenty year life expectancy. For years, before the TLOA's enactment, and in the year since it was passed, we have asked over and over—without success---that the BIA provide sufficient federal funds to bring the BIA's Warm Springs juvenile and adult detention facility into compliance with current standards. So, before Warm Springs can begin considering how to implement the Act's enhanced sentencing and long term incarceration authority, we first need the financial resources to bring the BIA Warm Springs juvenile detention and adult correctional facility up to current standards to house our juvenile and adult offenders on our own reservation where they belong and where they can receive the programs and treatment they need.

### IV. SLEC CARDS

Another unfulfilled promise of the TLOA concerns federal deputization of tribal officers to enforce federal law. This is done through the BIA's issuance of Special Law Enforcement Commissions ("SELC cards"), formerly known as Deputy Special Officer Commissions. Getting these commissions issued to tribal officers

has always been a mystifying, very long, and frustrating process. The TLOA promised to change that. At least for Warm Springs, it has not. Recently, our Warm Springs Tribal officers signed their applications for SELC cards and sent them to Washington, D.C. for approval. Three months later, the applications came back signed by BIA officials but asking Tribal officers to sign a separate form so that laminated SELC cards could be issued from Washington, D.C. That process is expected to take an additional three months. So, when completed, the new, improved, and streamlined SELC cards process for tribal officers under the TLOA will be a half-year process simply to get federal enforcement authority. That really is no improvement over the unacceptable situation before the TLOA's enactment.

#### **V. IMPROVED FEDERAL/TRIBAL WORKING RELATIONSHIP**

On a positive note, the TLOA has produced in a new and improved relationship between Warm Spring tribal justice system personnel and the federal law enforcement team responsible for prosecuting major crimes on the Warm Springs Reservation. One Warm Springs Public Safety Branch official who works actively with the U.S. Attorney's Office in Portland, the FBI and other federal enforcement officials described the Warm Springs/Federal working relationship as having "improved tremendously" since enactment of the TLOA. One of the objectives of the TLOA was improvement in the working relationships between tribal and federal law enforcement and justice services officials. In the case of Warm Springs, that desired result has been achieved.

Another positive impact of the TLOA is the change in Public Law 280 allowing federal criminal enforcement on Public Law 280 reservations, as requested by the tribal governments. Of course, this change does not affect Warm Springs as we are the only tribe in Oregon that Congress expressly exempted by Public Law 280's application to Oregon. But for the six current P.L. 280 tribes in Oregon, the new Department of Justice regulations announced earlier this month provide a pathway to federal concurrent criminal jurisdiction over these reservations. We expect that most of the P.L. 280 tribes in Oregon will seek federal concurrent criminal jurisdiction on their lands as a way to diminish the state jurisdiction brought on by P.L. 280.

## VI. TRIBAL ENFORCEMENT AUTHORITY OVER NON-INDIANS

Besides our experiences with the TLOA, the other issue we want to comment on is the need for further federal administrative and Congressional action to address the U.S. Supreme Court imposed limitations on Tribal law enforcement. As you know, tribes lack criminal jurisdiction over non-Indians, so Tribal police cannot enforcement tribal criminal laws in Indian country over non-Indian offenders. These offenders must either go to federal court or state court, depending on the nature of their offenses. Tribal officers can make federal arrests under the General Crimes Act and other federal statutes and send these cases to federal prosecutors if they have SLEC cards, but, as stated above, tribal officers often lack such authority. Much worse is the problem of non-Indian offenders who must go to state court. With a few exceptions, states do not recognize tribal officers as “police officers” under state law empowered to enforce state criminal statutes, even though tribal officers obtain the same training and certification as state law enforcement officers.

Recently, in Oregon, this serious public safety problem was highlighted by an Oregon Court of Appeals decision that threw out the state court convictions of a non-Indian offender arrested by a Warm Springs Tribal Police officer in hot pursuit from the Reservation for attempting to elude an officer and resisting arrest by an officer. The Court ruled that the Warm Springs officer was not a “police officer” under Oregon statutory and common law, and therefore there was no basis for his arrests and conviction. This ruling was made even though tribal officers in Oregon have been trained and certified since 1978 by the Oregon Department of Public Safety Standards and Training.

To its credit, the 2011 Oregon Legislative session addressed this problem by enactment of SB 412, which provides a mechanism for Tribal police officers in Oregon to obtain the full authority under Oregon statutes to enforce Oregon’s criminal laws, both on and off reservation. The statutory mechanism to obtain that authority, however, is burdensome and for a three month period of time (which, fortunately, has now passed) included a statutory provision regarding jurisdictional

“reciprocity” that was very offensive to Warm Springs as the only Tribe in Oregon that Congress expressly exempted from the application of Public Law 280.

In our view, the solution to this problem must come from the Federal Government. Either tribes must be extended criminal jurisdiction over non-Indians, or methods must be employed to force states to recognize tribal police officers as having the same authority and powers as all other law enforcement officers in the state. From our experience with SB 412 in Oregon, we know there will be political resistance to this effort, most likely from the local county sheriffs, but it must be done in order for there to be genuine public safety and a seamless and equitable law enforcement effort across tribal and non-tribal jurisdictions. We strongly encourage the Commission to recommend federal administrative and legislative incentives and forcing mechanisms, such as those used to nationalize the speed limit and the drinking age, to strongly encourage, if not compel, states to provide this authority to tribal officers.

## VII. CONCLUSION

Thank you for considering our comments. We reserve the right to submit additional comments at a future Commission public hearing.