



# Congress of the United States

## House of Representatives

October 30, 2009

The Honorable Ken Salazar  
Secretary of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Secretary Salazar:

On April 1, 2009, the Committee on Natural Resources held a hearing entitled “Supreme Court Decision in Carcieri v. Salazar Ramifications to Indian Tribes”. Though informative, no one from the Administration participated, leaving some major questions unanswered.

It is well known, though, that the Department has been considering this matter. The Office of the Secretary sent a March 12th memorandum to BIA Regional Directors asking for “needed information” to “identify tribes that may be impacted by the Carcieri decision.” The Regional Offices were directed to compile a list of certain information. The Department also convened three tribal consultation meetings in California, Minnesota, and Northern Virginia in late June and early July. In spite of media reports that “quick action” was sought in the Department to address Carcieri, the Department has so far provided the Committee with no information on the results of its work, except for your October 23, 2009, letter offering unqualified support for H.R. 3742.

Though I have not formed a final opinion of this legislation, I do believe it is important for Congress to address the post-Carcieri situation on both lands previously taken into trust, and for pending and future land in to trust applications. Congress must work deliberately and I look forward to your testimony at the November 4th hearing.

To assist us in making the November 4th hearing as thorough and informative as possible, I would appreciate your preparing responses to the questions listed below, any or all which might be asked during the hearing. If preparing complete responses is not possible in time for the hearing, then please submit written responses within a reasonable time afterward.

1. Has the Department determined which tribes, on the latest list of recognized tribes annually published in the *Federal Register* (pursuant to the Federally Recognized Indian Tribe List Act of 1994), were not under federal jurisdiction on June 18, 1934?

2. If so, what criteria were used to make such a determination that a tribe was not under federal jurisdiction on June 18, 1934? Within your Department, who has made the determination as to which tribes were not under federal jurisdiction on June 18, 1934?
3. If an actual determination has not been made, has the Department prepared a list of possible tribes that may not have been under federal jurisdiction on June 18, 1934?
4. For a list of either type, has the Department shared a list with any Committee of the Congress, or other persons or organizations outside of the Department? Would the Department provide the list, or lists, to this Committee for review?
5. Has the Department assessed how many parcels and/or acres of land the Secretary of the Interior acquired in trust pursuant to Section 5 of the Indian Reorganization Act (as amended) for tribes not under, or possibly not under, federal jurisdiction on June 18, 1934? If so, how many such acres in total were placed in trust prior to the Carcieri decision?
6. If the Department has compiled an analysis of affected acreage, has it assessed the current use of such lands (i.e., housing, schools, health clinics, government facilities, economic development or business enterprises, gaming, agricultural or forestry purposes, etc.)? If so, would the Department provide the compilation to the Committee for review?
7. Are there pending applications for land in to trust that are in limbo following the Carcieri decision? How many applications, and for how many acres in total?
8. How does Carcieri affect land presently held in trust for a tribe not under federal jurisdiction in 1934? Is it the Department's view that lands taken in to trust since 1934 for tribes not then under federal jurisdiction are in imminent legal jeopardy of losing their trust status? What status does the Department believe these lands currently hold?
9. According to your October 23, 2009, letter to Representative Dale Kildee, the Department agrees that Carcieri "was not consistent with the long-standing policy of the United States to assist tribes ...". Does the Department agree that the Supreme Court's decision was correct as to the law, notwithstanding the long-standing policy of the Department?
10. Section 1(a)(2) of H.R. 3742 re-writes the definition of "tribe" in Section 19 of the IRA. The new definition includes any tribe "that the Secretary of the Interior acknowledges to exist as an Indian tribe." Do you view this phrase as a delegation by Congress of authority for you to acknowledge a tribe, or as recognition by Congress of an inherent, Article II authority independent of any delegation of such authority by Congress?

11. Is it, or has it ever been, the Department's position that the Indian Reorganization Act extended recognition to tribes or delegated authority to the Secretary to extend recognition to a tribe?
12. Section 1(a)(2) of H.R. 3742 includes "Alaska Native" in the new definition of "tribe". Would this permit you to acquire lands in trust for the benefit of Alaska Native villages? If so, were the views of the Governor or Attorney General of Alaska sought prior to sending the letter of support for H.R. 3742?
13. Has the Department consulted with the leaders, either Governor or Attorney General, of any of the 27 states that either filed *Amici* briefs with the Supreme Court in support of the State of Rhode Island and Governor Carcieri, or publically signed a letter expressing their interest in legislation relating to the Carcieri decision?
14. What statute authorized the Department's administrative process to recognize a tribe as found in 25 C.F.R. Part 83? For the convenience of the Committee, please provide a copy of the relevant statute(s).
15. Does Carcieri affect your authority to proclaim a new Indian reservation under Section 7 of the IRA? Can you proclaim a new Indian reservation for lands already acquired in trust for a tribe not under federal jurisdiction in 1934?
16. In addition to H.R. 3742, has the Department considered other possible administrative or legislative options for establishing a means for taking land in to trust for tribes that were not under federal jurisdiction in 1934? If so, what were those options, and would you recommend that Congress give consideration to any of the options?

I know this is a matter to which you are personally dedicated and I thank you for your attention and dedication. Once again, I look forward to hearing your testimony and responses to the Members' questions on November 4<sup>th</sup>.

Sincerely,



Doc Hastings  
Ranking Republican Member  
House Natural Resources Committee