



# CALIFORNIA INDIAN LEGAL SERVICES

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## TRIBAL ALERT

June 21, 2010

### TRIBAL SUPPORT NEEDED FOR LEGISLATIVE FIX OF *CARCIERI*

*PLEASE POST and/or DISTRIBUTE*

The Supreme Court's decision in *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009), effectively placed a halt on tribal fee-to-trust applications. If not addressed, the Court's opinion could have far-reaching and long-term impacts on California tribes.

The Court held that the Secretary of the Interior cannot take land into trust for a tribe unless it can be shown that the tribe was "**now** under federal jurisdiction" on or before the date when the Indian Reorganization Act (IRA) was passed – **June 18, 1934**. Many California tribes may be unable to meet this judicially-created test. If fee-to-trust applications are challenged (which seems to be the standard practice in many parts of California), even tribes which can meet the test could face the added burden of proving in court that they were under federal jurisdiction on or before June 18, 1934.

Still worse is the possibility that future courts will interpret the *Carcieri* decision more narrowly, and in ways that make the test harder to satisfy. *Carcieri* affects tribes in California more than those in other states. Although this issue is on the radar of many tribes and tribal advocacy groups throughout the nation, to date there has been relatively little input from California tribes.

There is currently a proposal to amend the IRA, sponsored by Senator Dorgan (D-N.D.), that will counteract the *Carcieri* decision by eliminating the "now under federal jurisdiction" language. Unfortunately, a few Senators are opposed to this solution, including Senator Feinstein. Your tribe's input is urgently needed so that Congress appreciates that California tribes want this amendment.

Attached is a model letter for tribal leadership to use in voicing their positions (a Microsoft Word version is available on our website for your convenience at [www.calindian.org](http://www.calindian.org) – click on Alerts). We ask that California tribal leaders review this letter, modify it as they wish, and send it to Senators Feinstein and Boxer as soon as possible. Thank you for your support.

*"Proudly Advocating for the Rights of California Indians & Indian Tribes for Over Forty Years"*

**[PUT LETTER ON TRIBAL/ORGANIZATIONAL LETTERHEAD]**

[date]

Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Re: Letter of Support for Amendment to the Indian Reorganization Act  
("IRA")

Dear Honorable Senator Feinstein:

On behalf of the **[insert Tribal name/organization here]**, we offer this letter in support of legislation amending the Indian Reorganization Act ("IRA"), 25 U.S.C. §479, which will reaffirm the authority of the Secretary of the Interior to take land into trust for all federally recognized Indian tribes. The IRA was enacted to fulfill an "overriding goal of encouraging tribal self-sufficiency and economic development." Unfortunately, the United States Supreme Court in *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009), has issued an overly technical interpretation of the IRA that prohibits the Secretary from taking land into trust for a tribe without a showing that the tribe was "under federal jurisdiction" as of the date the IRA was enacted, June 18, 1934. This decision creates an artificial distinction among tribes and that discriminates against those tribes that are now under federal jurisdiction but where the historical record is sparse as to their status as of the date the IRA was enacted. This decision not only impacts those tribes, but also establishes an artificial, ambiguous and potentially costly test that adversely impacts all tribes without furthering any valid purpose. We believe that justice and equity call for Congress to exercise its plenary authority over Indian affairs to insure that all currently recognized tribes be treated equally.

California Tribes have a unique historical interaction with the federal government. As such, a determination of whether or not a California Tribe was "under federal jurisdiction" in 1934 will be left to a case by case determination that will in many cases result in protracted litigation. The federal government's negotiated 18 treaties with California Tribes in 1851, demonstrating the federal government's acknowledgment and recognition of California Tribes and their aboriginal lands; but these treaties were never ratified. That same year the federal government enacted the 1851 Enabling Act that gave all Indians in California two years to submit their land claim to the federal government. Untimely claims were barred and their land title lost. For obvious reasons millions of California tribal lands were lost.

In the ensuing years, Tribes were marched to Indian reservations that were then disestablished leaving many California Indians homeless and landless. To address this critical

problem, Tribes and individual Indians were issued allotted lands from the federal government. Then in 1958, under the Rancheria Act, 42 California Tribes were terminated and their tribal lands allotted to individual tribal members. Over the following decade, litigation resulted in most of these Tribes being un-terminated and restored to federal recognition. Unfortunately, in many instances their land base was lost. This ever shifting federal policy on the treatment of California Tribes resulted in the loss of large land holdings and the forced acceptance of lands in remote and isolated areas.

Against this historical backdrop, California Tribes have strived to regain the lands they have lost or to acquire lands that can sustain their tribal membership. **[An example of your tribe's acquisition of lands or an example of some other Tribes land acquisition that resulted in providing housing or tribal economic development.]**

Limiting the Secretary's authority to take fee land into trust for the benefit of only those Tribes "under federal jurisdiction" in 1934 is to deny many other tribes the ability to secure and protect much-needed land for the well-being of their members. This is not a gaming issue. The majority of California tribes, including those with existing casinos, are in need of trust land for tribal housing and for on-reservation, non-gaming business development.

We are deeply concerned with the impacts that the *Carcieri* decision will and is having on California Tribes. If courts are left to interpret *Carcieri*, the rule could become narrower and further from the purpose that Congress intended with the IRA. Even tribes that fit within the *Carcieri* limitation are being challenged on fee-to-trust applications and are forced to expend limited and valuable resources on litigation. As a constitutional matter, we feel the solution lies with Congress. It is your obligation to clarify legislation regarding Indian affairs rather than leaving the matter to the judicial branch which can lead to inconsistent and arbitrary decisions on the interpretation of the IRA.

We urge your support for an amendment to the IRA §479 that will overturn the *Carcieri* decision. We appreciate your time and consideration.

Sincerely,

Tribal Chairperson

cc: Senator Byron Dorgan  
322 Hart Senate Office Building  
Washington, D.C. 20510