



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #DEN-18-055

TITLE: Calling on the Department of the Interior to Reinstate and Properly Apply Solicitor Opinions Concerning the Application of the Indian Reorganization Act to American Indians and Alaska Natives Consistent with Its Trust Responsibility to all Federally Recognized Tribes

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in February 2009 the U.S. Supreme Court in *Carcieri v. Salazar* held the Indian Reorganization Act's ("IRA") first definition of "Indian" includes only those tribes "under Federal jurisdiction" on June 8, 1934; and

WHEREAS, in March 2014 the Solicitor for the Department of the Interior ("DOI") issued an M Opinion interpreting the "under federal jurisdiction" requirement and identifying various types of evidence demonstrating that a tribe was under federal jurisdiction in 1934 (the "*Carcieri* M Opinion"); and

WHEREAS, in January 2017 the Solicitor issued another M Opinion confirming that Congress' extension of Section 5 of the IRA to Alaska in 1936 provides specific authority for the Secretary to take land into trust for Alaska Natives, and finding that the Supreme Court's decision in *Carcieri* did not limit this authority (the "Alaska M Opinion"); and

WHEREAS, the Solicitor's analysis in both the *Carciere* M Opinion and Alaska M Opinion is well reasoned and consistent with federal court decisions, including *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552 (D.C. Cir. 2016) (upholding application of the under federal jurisdiction test as used in *Carciere* M Opinion), and *Akiachak Native Community v. Salazar*, 935 F.Supp.2d 195 (D.D.C. 2013) (affirming ability of the Secretary to acquire land in trust for Alaska Tribes), and *Akiachak Native Community v. Dept. of the Interior*, 827 F. 3d 100 (D.C. Cir. 2016) (vacating the district court's 2013 decision in light of DOI's revision of its fee to trust regulations to eliminate the provision prohibiting acquisition of land in trust in Alaska); and

WHEREAS, DOI has since retreated from or abandoned the positions articulated in the *Carciere* M Opinion and Alaska M Opinion:

- On July 29, 2018, the Principal Deputy Solicitor withdrew the Alaska M Opinion, replacing it with a notice and comment process intended to review the Secretary's authority to take land into trust in Alaska, which DOI estimates will take a minimum of a year to complete; and
- On September 7, 2018, DOI issued a decision finding that the Mashpee Wampanoag Tribe of Massachusetts ("Mashpee Tribe") was not under federal jurisdiction in 1934 despite the fact that the Tribe had presented clear evidence of federal jurisdiction previously relied upon by DOI, consistent with the *Carciere* M Opinion, in issuing decisions finding other tribes to be under federal jurisdiction in 1934; and

WHEREAS, the Principal Deputy Solicitor's July 29, 2018 withdrawal of the Alaska M Opinion, despite DOI's issuance of new regulations removing restrictions on the acquisition of land into trust, is greatly concerning to Alaska tribes, many of whom have substantially relied upon DOI's regulations and its position in litigation concerning the same in expending resources on the acquisition of land in trust; and

WHEREAS, DOI's September 7, 2018 decision misinterpreting the *Carciere* M Opinion is of further concern to tribes, many of whom have documented evidence of exercises of federal jurisdiction similar to the Mashpee Tribe; and

WHEREAS, by refusing to follow its prior decisions and relevant case law, DOI's actions threaten the sovereignty and security of American Indian and Alaska Native tribal governments, their citizens, and their lands, inconsistent with the United States' solemn trust responsibility.

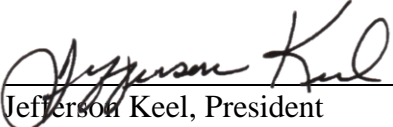
NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls upon the Solicitor for the Department of the Interior ("DOI") to reinstate the Alaska M Opinion and to reaffirm the authority of the Secretary to acquire land in trust in Alaska for the benefit of the tribal governments in Alaska; and

BE IT FURTHER RESOLVED, that NCAI calls upon DOI to withdraw its misguided September 7, 2018 decision and to reexamine the clear evidence of federal jurisdiction that the Mashpee Tribe has presented; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.



Jefferson Keel, President

ATTEST:



Juana Majel Dixon, Recording Secretary