



NATIONAL CONGRESS OF AMERICAN INDIANS

Resolutions Committee Recommendation

Resolution #: REN-19-017

Title: Support for Federal Legislation to Address the Supreme Court's Misguided *Carcieri* decision and Protect Existing Tribal Trust Lands

Comments:

The resolution is in order and addresses an issue that is emergency in nature and national in scope. Red-line edits address conciseness, the content of the legislative fix, and ensure that Alaska Native tribal nations and villages are included. This resolution would be in furtherance of NCAI Resolution [RAP-10-024](#) which supported a specific *Carcieri* legislative fix and [MSP-15-044](#) which supported a legislative re-affirmation of existing tribal trust lands.

Recommendations:

This revised resolution should be forwarded to the Land and Natural Resources committee and the Trust Lands, Natural Resources, and Agriculture subcommittee for consideration. The NCAI Resolutions Committee recommends adoption.

Sponsor a member in good standing (yes/no)?: _____



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #REN-19-017

**TITLE: Support for Federal Legislation to Address Supreme Court's Misguided
Carciari decision and Protect Existing Tribal Trust Lands**

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Aaron Payment
*Sault Ste. Marie Tribe of Chippewa
Indians of Michigan*

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Kallam Tribe

**REGIONAL VICE-
PRESIDENTS**

ALASKA
Rob Sanderson, Jr.
*Tlingit & Haida Indian Tribes of
Alaska*

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Shannon Holsey
*Stockbridge Munsee Band of
Mohicans*

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Brian Poncho
Bishop Paiute Tribe

ROCKY MOUNTAIN
VACANT

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Quintin C. Lopez
Tohono O'odham Nation

CHIEF EXECUTIVE OFFICER
KEVIN ALLIS
*FOREST COUNTY POTAWATOMI
COMMUNITY*

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

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, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands; and

WHEREAS, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

WHEREAS, Indian lands are the original territory of Indian tribes. From the colonial era, private persons were not permitted to acquire Indian lands without the consent of the sovereign, and the United States adopted that legal doctrine in the Indian Non-Intercourse Act when the American Republic was founded; and

WHEREAS, the Allotment Act, accompanied by the policy of forced assimilation, resulted in the taking and loss of over 86 million acres of Indian homelands; and

WHEREAS, Congress enacted the Indian Reorganization Act of 1934 (IRA) to reverse the failed allotment policy and to further the overarching goal of restoring and protecting Indian homelands, empowering Tribal governments, and preserving Tribal culture; and

WHEREAS, Since 1934, Republican and Democratic Administrations have interpreted the IRA to authorize the Department of the Interior to place land into trust for all federally recognized Tribes; and, for seventy-five years, the Department has taken land into trust for the benefit of Tribal governments so that Tribes can build schools, health clinics, housing, and other essential community infrastructure as well as preserve cultural and sacred areas to protect Tribal traditional ways of life; and

WHEREAS, in 2009, the U.S. Supreme Court upended this long-standing statutory interpretation of the IRA in ruling in *Carcieri v. Salazar* that the Department of the Interior's authority to take land into trust is limited to only those Tribes "under federal jurisdiction" as of 1934, the year Congress enacted the IRA; and

WHEREAS, *Carcieri* has created significant uncertainty and ambiguity in the land-into-trust process given terms of art, such as "federally recognized" and "federal recognition," were not developed until the 1970's when the Department of the Interior established a formal federal acknowledgement process; and

WHEREAS, *Carcieri* has spawned countless protracted lawsuits over the status of Tribal lands and has opened existing Tribal trust lands to attack; and

WHEREAS, *Carcieri* is causing irrevocable damage to Tribal sovereignty, tribal culture, and the federal trust responsibility and had deterred much needed financial investment and economic development in Indian Country; and

WHEREAS, without legislation to address *Carcieri* and protect trust lands, litigation in the federal and state courts will continue to mushroom and threaten existing Tribal trust lands throughout Indian Country and could result in additional harmful U.S. Supreme Court precedent that would continue to adversely impact Tribal lands and Tribal sovereignty; and

WHEREAS, in the 116th Congress, Rep. Tom Cole (R-OK) and Rep. Betty McCollum (D-MN) have introduced H.R. 375 to address the *Carcieri* decision and reaffirm the status of existing trust lands, which passed the U.S. House of Representatives.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on the U.S. Congress to enact legislation, like H.R. 375, to address *Carcieri* and protect current trust lands for all federally recognized Indian Tribes in fulfillment of Congress' intent through enactment of the IRA; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.

Jefferson Keel, President

ATTEST:

Juana Majel Dixon, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #REN-19-017

TITLE: Support for Federal Legislation to ~~Address Supreme Court's Misguided Careieri decision~~Enable all Federally Recognized Tribal Nations to Place Land Into Trust and Protect Existing Tribal Trust Lands

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians of Michigan

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Kallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Rob Sanderson, Jr.
Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Shannon Holsey
Stockbridge Munsee Band of Mohicans

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Brian Poncho
Bishop Paiute Tribe

ROCKY MOUNTAIN
VACANT

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Quintin C. Lopez
Tohono O'odham Nation

CHIEF EXECUTIVE OFFICER
KEVIN ALLIS
FOREST COUNTY POTAWATOMI COMMUNITY

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

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**, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands, and~~

WHEREAS, ~~Indian Tribes~~tribal nations are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian ~~tribes~~tribal as sovereigns; and

WHEREAS, Indian lands are the original territory of ~~Indian tribes~~tribal nations. From the colonial era, private persons were not permitted to acquire Indian lands without the consent of the sovereign, and the United States adopted that legal doctrine in the Indian Non-Intercourse Act when the American Republic was founded; and

WHEREAS, the Allotment Act, accompanied by the policy of forced assimilation, resulted in the taking and loss of over 86 million acres of Indian homelands; and

WHEREAS, Congress enacted the Indian Reorganization Act of 1934 (IRA) to reverse the failed allotment policy and to further the overarching goal of restoring and protecting Indian homelands, empowering ~~tribal~~tribal governments, and preserving ~~tribal~~tribal culture; and

WHEREAS, Since 1934, Republican and Democratic Administrations have interpreted the IRA to authorize the Department of the Interior (Interior) to place land into trust for all federally recognized tribal nations Tribes; and, for seventy-five years, ~~the Department Interior~~ has taken land into trust for the benefit ~~of of tribal nations which has enabled them to Tribal governments so that Tribes can~~ build schools, health clinics, housing, and other essential community infrastructure as well as preserve cultural and sacred areas ~~to protect Tribal traditional ways of life~~; and

WHEREAS, in 2009, the U.S. Supreme Court upended this long-standing statutory interpretation of the IRA in ruling in *Carcieri v. Salazar* that the Secretary of Department of the Interior's authority to take land into trust is limited to only those Indian Tribes tribal nations "under federal jurisdiction" ~~in as of 1934, the year Congress enacted the IRA~~; and

WHEREAS, *Carcieri* has created significant uncertainty and ambiguity in the land-into-trust process given terms ~~of art~~, such as "federally recognized" ~~and "federal recognition,"~~ were not developed until the 1970's when ~~the Department of the Interior~~ established a formal federal acknowledgement process; and

WHEREAS, *Carcieri* has spawned countless protracted lawsuits over the status of Tribal lands and has opened existing Tribal trust lands to attack; and

WHEREAS, *Carcieri* is causing irrevocable damage to Tribal sovereignty, tribal culture, and the federal trust responsibility and has ~~se~~ deterred much needed financial investment and economic development in Indian Country; and

WHEREAS, without legislation to address *Carcieri* and protect trust lands, litigation ~~in the federal and state courts~~ will continue to mushroom and threaten existing Tribal trust lands throughout Indian Country and could result in additional harmful U.S. Supreme Court precedent that would continue to adversely impact ~~Tribal lands and Tribal~~ sovereignty; ~~and.~~

~~**WHEREAS**, in the 116th Congress, Rep. Tom Cole (R-OK) and Rep. Betty McCollum (D-MN) have introduced H.R. 375 to address the Carcieri decision and reaffirm the status of existing trust lands, which passed the U.S. House of Representatives; and~~

NOW THEREFORE BE IT RESOLVED, ~~that in furtherance of RAP-10-024 and MSP-15-044,~~ the National Congress of American Indians (NCAI) calls on the U.S. Congress to enact legislation, ~~like H.R. 375,~~ to reaffirm the Secretary of the Interior's authority to restore tribal homelands for all federally recognized tribal nations including Alaska Native tribal government tribes and Alaska Native villages ~~address Carcieri and~~ to protect current trust lands for all federally recognized Indian Tribes in fulfillment of Congress' intent through enactment of the IRA tribal nations; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.

Jefferson Keel, President

ATTEST:

Juana Majel Dixon, Recording Secretary