



NATIONAL  
CONGRESS  
OF AMERICAN  
INDIANS

**National Congress of American Indians Presentation for  
University of Arizona – Rogers College of Law**

**Conference and Consultation:**

*“The Significance of the UN Declaration on the Rights of Indigenous Peoples”*

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**April 27, 2012 – 10:30a.m.-12:15p.m.**

**PANEL: Social & Economic Development including Health and Education**

**President Jefferson Keel**

**[Chickasaw greeting]**

Good morning, my name is Jefferson Keel and I serve as President of the National Congress of American Indians and the Lt. Governor of the Chickasaw Nation.

As the global economy begins the long road to recovery, more and more people are realizing that the culture and values of Indigenous people can contribute to the economic vitality of our nation and the world. For tens of thousands of years, our people have been stewards of the environment. And now, non-Indigenous leaders are realizing that we are also successful stewards of our economies and societies. Indigenous peoples have been doing more with less for generations. It is clear that tribal businesses bring value to the table.

Like non-Native CEOs, tribal leaders are required to consider political, economic, and business risk when making decisions -- when to expand... when to borrow money...when to diversify. In addition, like non-Native CEOs we must ensure our enterprises remain competitive -- by developing new market share; providing appropriate incentives for our employees; and leveraging innovation. But the role of tribal and Indigenous leaders goes well beyond that of CEOs.

As Native business leaders, we have unique political, business, and cultural risks that we carefully balance. For example, when we consider a new business venture, strategy, or market, we verify that it fits with the values of our community. We look for development that will provide real opportunity for productive and meaningful employment for our citizens. We consider how and when to best utilize our limited natural and geographic resources. We look for programs that support preservation and learning of our languages, our healing traditions and our histories. And we look for structures that will ensure our citizens have the education required in this workforce and the next.

Most importantly, we recognize our heritage and who we are answerable to. Do we reinvest our dividends in our business for possible future growth or do we help those in need at home or do we support our youth and education? How do we recognize the sacrifices made by our ancestors to obtain our land when we chose to develop our land or utilize our resources? How do we ensure we are making decisions that will improve the quality of life for our community today and in the long term? These are often hard decisions and heavy responsibilities, but if we take the necessary steps to position ourselves to take advantage of current opportunities and trends, tribal

leaders are poised to make significant advances for our people, enterprises, communities, and nations in the decades to come.

Economic development on tribal lands in the United States faces many hurdles. Because our lands are held in trust by the United States government, we cannot pledge our land for credit to build our businesses or our communities. The result is slow economic growth that relies on home-grown capital, government grants and loans and may, through sheer tribal determination, allow our tribes to obtain a credit rating that allows them better access to capital.

### **Land-Related Challenges**

First, I will focus on two challenges affecting our lands that currently restrain and restrict economic development and community development on tribal lands. I will then provide recommendations for several changes that would create opportunities for education and workforce development in Indian Country.

#### Carcieri

In February of 2009, the United States Supreme Court issued a decision in *Carcieri v. Salazar* -- overturning a longstanding interpretation of the Indian Reorganization Act of 1934 or "IRA" by holding that the phrase "now under Federal jurisdiction" limits the Department of Interior's authority to provide benefits under the IRA only to those Indian tribes that were "under federal jurisdiction" on June 8, 1934. The *Carcieri* decision by the Supreme Court is at odds with Congress's intent to restore tribal self-determination to all Indian tribes regardless of how or when they received federal recognition.

Disorder in this area of the law affects land restoration efforts and economic development as well as contracts and loans, and could negatively affect tribal and federal jurisdiction, public safety, and provision of services on reservations across the country. Legislation that will provide a solution -- a "*Carcieri* Fix"-- needs to be enacted by Congress to restore the benefits provided by the Indian Reorganization Act and to remove the uncertainty surrounding development and strategic planning in Indian Country.

#### Control Over Land Transactions

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. For instance, the Secretary of the Interior must approve land into trust applications, land transfers, rights-of-way permits, leases for business development, and the sale of natural resources. Due to the bottleneck created by multiple oversight requirements and the inability to delegate authority, this oversight process hinders business development and acts as a disincentive to potential partnerships with outside entities.

The bureaucratic approval process and its inherent delays, from months to years, has meant that corporations have decided to go elsewhere rather than wait for approval to lease land or obtain a permit or build a commercial enterprise on tribal land. Even a tribal corporation belonging to the Navajo Nation that entered into an operating agreement with its tribal government/owner in 2011 had to wait 10 months for approval by the U.S. Department of the Interior before it could begin operating under that agreement.

Tribes recommend Congressional support for the rule recently proposed by the Secretary of the Interior to reform federal surface leasing regulations for American Indian lands that should streamline the approval process for home ownership, expedite economic development and spur renewable energy development in Indian Country. Additionally, tribes encourage Congress to pass the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, H.R. 205, which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands. We hope that applications for the sale of resources will also be given priority treatment in the DOI's decision-making process.

Relatedly, tribes support the Indian Tribal Energy Development and Self-Determination Act Amendments (S. 1684) that would spur vast tribal energy potential for the economic development of their peoples and nearby communities. Today, a company desiring to drill on or near a reservation has a clear choice between drilling on tribal land that requires a 49-step process through 4 federal agencies and a delay of 6 to 12 months to wait for approval of a lease application, plus a drilling fee of \$6500 -- compared to drilling on non-tribal land for a drilling fee of only \$400 and approval from only the landowner.

S. 1684 would make it easier for tribes to create tribal energy development organizations and enter into tribal energy resources agreements with the Department of Interior so that many existing administrative burdens would be reduced or eliminated, and tribes -- not the Department of the Interior -- would be the drivers and managers of the energy resources on their lands.

Additionally, the discriminatory permit application fee to drill on tribal trust land noted earlier could be rapidly addressed by the Department of the Interior issuing a ruling that exempts tribal trust land from the \$6,500 fee or lowers permit fees to a level comparable with state permits.

Overall, tribes are in favor of models like Self-Determination and the Indian Employment, Training, and Related Services Demonstration Act (Public Law 102-477) ("477") program that permit tribes to design their own programs and services, build tribal capacity, and use federal funding more effectively. This is exactly what we should be doing -- spending more dollars and time on services and less on administrative burdens. Especially in areas like infrastructure and energy development.

### **Employment and Education Recommendations**

Across all programs and all legislation, it is critical that Congress and the Administration ensure tribes have access equal to states in all programs. An example where this parity is needed is the American Jobs Act where including tribes alongside states and local governments to protect the jobs of teachers and first responders and build infrastructure would create significant funding for economic opportunities.

In the area of workforce development, Indian Country has one of the youngest populations in the nation with 42 percent of Native people under the age of 25. Tribal colleges and universities are the key to workforce development training for thousands of Native people and other rural Americans. Including tribal colleges and universities in federal workforce funding would create significant opportunities for new job creation.

Indian tribes recognize the challenges of developing their local economies and providing jobs without the access to funding and basic business tools, like broadband access, that are available to much of the United States outside of tribal lands. NCAI works with Congress and the federal agencies in the United States to ensure tribes are included in developing and paving a way for economic development and job creation in Indian country.

Thank you for inviting me to speak with you today.