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August 24, 2010

To: CSAC Executive Committee

From: Mike McGowan, Supervisor, Yolo County & CSAC Second Vice President  
DeAnn Baker, CSAC Senior Legislative Representative  
Kiana Buss, CSAC Legislative Analyst

Re: **Advocacy Strategy for Congressional Conversations on *Carcieri***

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### Introduction

At the CSAC Executive Committee meeting on Thursday, August 19<sup>th</sup>, Supervisor McGowan provided an update regarding CSAC's efforts related to the *Carcieri* decision and more broadly, comprehensive fee-land into trust reform. A number of you indicated that you would like to reach out to your Congressional representatives to assist CSAC in opposing recent attempts to pass the *Carcieri* "quick fix" via the appropriations process. The following is a recap of the update Supervisor McGowan provided as well as requested next steps. Talking points may be found in Attachment Two to assist you in these efforts.

### Status Report

- The *Carcieri* "quick fix" has been attached to the House Appropriations spending bill by the Interior Subcommittee with the full Appropriations Committee expected to vote on the measure when Congress returns from summer recess on September 13<sup>th</sup>.
- A "quick fix" amendment is also going to be proposed by Senator Dorgan in the Senate Appropriations Interior Subcommittee when Congress is back in session.
- CSAC and our other state partners are working with NACo to try to strip the *Carcieri* "quick fix" amendment from the spending bill – on both procedural and policy grounds.
- **We need to outreach to the California members who sit on the House Appropriations Committee to achieve this goal.**
- **THE CSAC MESSAGE IS TO OPPOSE THE *CARCIERI* "QUICK FIX" ATTACHED TO APPROPRIATIONS SPENDING BILLS FOR PROCEDURAL REASONS TO ALLOW A COMPREHENSIVE FEE-LAND INTO TRUST REFORM DISCUSSION TO ENSUE.**
- We are also seeking ways to gain support from Speaker Pelosi to oppose the "quick fix" as a rider to the Appropriations spending bill.
- Lastly, CSAC and our state partners are pursuing a strategy in the Senate, in particular with Senator Feinstein, to avoid attaching the "quick fix" to Senate Appropriations

spending bill. While Senator Feinstein appears to stand with us we need further support for her efforts.

### **Requested Next Steps**

- If your House Representative sits on the House Appropriations Committee (list of California members - - Attachment One), call them with the message that the *Carcieri* “quick fix” amendment must be removed from the Appropriations spending bill.
- If your House Representative does not sit on the Appropriations Committee, call them with the message that they should encourage their colleagues on the Appropriations Committee to strip the amendment from the spending bill.
- If the amendment remains in the spending bill, we need our delegation members to oppose it on the House Floor.
- Regardless of whether your House representative sits on the Appropriations Committee or not, everyone should reach out to Senator Feinstein and thank her for her support and urge her to remain committed to stopping an amendment in the Senate Interior Subcommittee.
- Please follow up with CSAC staff to report the outcome of your efforts. It is critical for the coalition to know which members have been approached about the issue as well as their reaction to your request. DeAnn Baker can be reached at (916) 650-8104 ([dbaker@counties.org](mailto:dbaker@counties.org)) or Kiana Buss at (916) 650-8185 ([kbuss@counties.org](mailto:kbuss@counties.org)).

### **Attachments**

In addition to the contact list for House Appropriation Committee members and talking points, we have attached a copy of letters CSAC has sent to both Senator Feinstein and the California House Delegation on removing the *Carcieri* “quick fix” from the spending measures, an editorial urging Senator Boxer and Pelosi to oppose policy amendments to spending bills, and a letter from Supervisor Diane Dillon, Napa County, to Speaker Pelosi urging her to oppose the “quick fix” as a part of spending measures.

## ATTACHMENTS

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Attachment One.....California House Delegation Appropriations  
Committee Contact List

Attachment Two .....Talking Points

Attachment Three.....CSAC Letters to Senator Feinstein & California  
House Delegation Re: Removing Carcieri “Quick  
Fix” from Appropriations

Attachment Four.....Sacramento Bee Editorial

Attachment Five.....Supervisor Diane Dillon’s Letter to Speaker Pelosi

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Attachment One  
California House Delegation Appropriations Committee Contact List

**Appropriations Committee - California House Delegation  
Contact List**

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**Barbara Lee (D-9)**

District Phone: (510) 763-0370

WDC Phone: (202) 225-2661

**Mike Honda (D-15)**

District Phone: (408) 558-8085

WDC Phone: (202) 225-2631

**Sam Farr (D-17)**

District Phone: Salinas (831) 424-2229; Santa Cruz (831) 429-1976

WDC Phone: (202) 225-2861

**Adam Schiff (D-29)**

District Phone: (626) 304-2727

WDC Phone: (202) 225-4176

**Lucille Roybal-Allard (D-34)**

District Phone: (213) 628-9230

WDC Phone: (202) 225-1766

**Jerry Lewis (R-41)**

District Phone: (909) 862-6030

WDC Phone: (202) 225-5861

**Ken Calvert (R-44)**

District Phone: Riverside (951) 784-4300; Las Flores (949) 888-8498

WDC Phone: (202) 225-1986

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Attachment Two  
Talking Points



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CARCIERI TALKING POINTS - - August 24, 2010

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**Message to Members of the Appropriations Committee and CA Delegation:**

- CSAC opposes using the appropriations process to subvert and avoid a full and meaningful policy debate around how to best address the *Carcieri* decision.
- The House Interior Appropriations Subcommittee adopted an amendment to its fiscal year 2011 spending measure that would provide the Secretary of Interior with authority to take fee-land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.
- The amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-land into trust process.
- Again, inclusion of the language as a policy rider to an appropriations bill would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.
- **CSAC REQUESTS THAT THE AMENDMENT BE STRIPPED FROM THE HOUSE APPROPRIATIONS SPENDING MEASURE AND THAT THE ISSUE BE GIVEN FULL CONSIDERATION VIA THE POLICY COMMITTEE PROCESS.**
- The *Carcieri* decision has provided a rare window of opportunity for Congress to address concerns related to the fee-land into trust process and California's counties urge that the full implications of the decision and all potential resolutions should be identified for consideration before legislative action is taken.

**Further Background**

- The recent Supreme Court Decision in *Carcieri v. Salazar* recognized BIA has exceeded authority in process where tribes take fee-land into trust for tribal commercial and other purposes.
- Lack of sufficient congressional direction has led the Government Accounting Office as well as CSAC to criticize both process and substance of fee-land into trust regulations.
- We need a new paradigm that recognizes that local government is a legitimate stakeholder in these decisions and that both tribes and counties benefit when their mutual interests are accommodated.
- It is the local community and government that Tribes will be working with to help insure commercial development projects are a success and receive the services they need.
- CSAC/NACo support a process that includes adequate notice to respond to proposals, clear guidelines and standards for fairly considering fee-land into trust applications, and clear standards requiring off-reservation project impacts to be mitigated and favorably recognizes tribes that are able to work with counties to negotiate mitigation agreements.

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Attachment Three  
CSAC Letters to Senator Feinstein & California House Delegation Re:  
Removing Carcieri “Quick Fix” from Appropriations





August 16, 2010

1100 K Street  
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Dear Members of the California Congressional Delegation:

As you may know, the Interior Appropriations Subcommittee adopted an amendment to its fiscal year 2011 spending measure that would provide the Secretary of Interior with authority to take land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934. On behalf of the California State Association of Counties (CSAC), I am writing to you in opposition to this provision.

The amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-to-trust process. Additionally, inclusion of the language as a policy rider to an appropriations bill would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.

In the wake of the Supreme Court's recent action, CSAC believes that Congress has a rare opportunity to thoughtfully reexamine the fee-to-trust process to ensure that program deficiencies – as well as the needs of tribes and local governments – are addressed. While the amendment would level the playing field for tribes seeking to have land taken into trust, it would not address the type of reforms that we believe are long overdue.

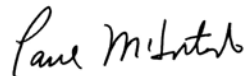
The current fee-to-trust process has a number of programmatic defects, including a lack of clearly defined standards for trust land acquisitions. In addition, there are insufficient notification requirements, meaning local governments are often forced to resort to Freedom of Information Act requests to determine if petitions for Indian land determinations have been filed in their jurisdictions. Accordingly, legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications for tribal development projects and have adequate opportunity to provide meaningful input. CSAC also believes that intergovernmental agreements should be required between tribes and local governments to require mitigation for adverse impacts of development projects, including environmental and economic impacts from the transfer of the land into trust.

As an alternative to advancing a *Carcieri* quick "fix," we urge Congress to adopt the enclosed Study Amendment, which would direct the Department of Interior to examine the effects of the *Carcieri v. Salazar* decision. The results of the study would provide Department officials and Members of Congress with a better understanding of whether or not a legislative fix is appropriate. Moreover, while the study is being performed,

stakeholders would be provided with sufficient opportunity to work with lawmakers to develop comprehensive legislation aimed at providing meaningful trust land reform.

Thank you for your consideration of this request. Should you have any questions regarding our position or need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or DeAnn Baker, CSAC Legislative Representative, at (916) 327-7500 ext. 509.

Sincerely,

A handwritten signature in black ink that reads "Paul McIntosh". The signature is written in a cursive, slightly slanted style.

Paul McIntosh  
Executive Director  
California State Association of Counties

Enclosure



July 30, 2010

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The Honorable Dianne Feinstein  
Chairwoman  
Subcommittee on Interior, Environment, and Related Agencies  
Committee on Appropriations  
Washington, DC 20510

Dear Chairwoman Feinstein:

It is my understanding that Senator Byron Dorgan (D-ND) may be offering an amendment to the Fiscal Year 2011 Interior Appropriations bill that would provide the Secretary of Interior with authority to take land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934. On behalf of the California State Association of Counties (CSAC), I am writing to urge you to oppose this effort.

The Dorgan amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-to-trust process. Additionally, the amendment, which would be considered as a policy rider to an appropriations bill, would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.

In the wake of the Supreme Court's recent action, CSAC believes that Congress has a rare opportunity to thoughtfully reexamine the fee-to-trust process to ensure that program deficiencies – as well as the needs of tribes and local governments – are addressed. While the Dorgan amendment would level the playing field for tribes seeking to have land taken into trust, it would not address the type of reforms that we believe are long overdue.

As you know, the current fee-to-trust process has a number of programmatic defects, including a lack of clearly defined standards for trust land acquisitions. In addition, there are insufficient notification requirements, meaning local governments are often forced to resort to Freedom of Information Act requests to determine if petitions for Indian land determinations have been filed in their jurisdictions. Accordingly, legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications for tribal development projects and have adequate opportunity to provide meaningful input. CSAC also believes that intergovernmental agreements should be required between tribes and local governments to require mitigation for adverse impacts of development projects, including environmental and economic impacts from the transfer of the land into trust.

As an alternative to advancing the Dorgan amendment, we urge Congress to adopt the enclosed Study Amendment, which would direct the Department of Interior to examine the effects of the *Carcieri v. Salazar* decision. The results of the study would provide Department officials and Members of Congress with a better understanding of whether or not a legislative fix is appropriate. Moreover, while the study is being performed, stakeholders would be provided with sufficient opportunity to work with lawmakers to develop comprehensive legislation aimed at providing meaningful trust land reform.

Thank you for your continued support of California's counties and for your consideration of this request. Should you have any questions regarding our position or need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or DeAnn Baker, CSAC Legislative Representative at (916) 327-7500 ext. 509.

Sincerely,

A handwritten signature in black ink that reads "Mike McGowan". The signature is written in a cursive, flowing style.

Mike McGowan  
Second Vice-President, California State Association of Counties  
Supervisor, Yolo County, California  
Vice-Chair, National Association of Counties' County & Tribal Government Relationships Subcommittee

Enclosure

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Attachment Four  
Sacramento Bee Editorial August 16, 2010

THE SACRAMENTO BEE [sacbee.com](http://sacbee.com)

## Editorial: Feinstein and Pelosi must nix power play

Published Monday, Aug. 16, 2010

Congress has a sordid history of quietly slipping riders into appropriations bills that have serious implications, and it appears to be on the verge of a doozy that would have direct implications for California.

At the behest of Indian tribes and their lobbyists, some members of Congress are seeking a "fix" to a 2009 U.S. Supreme Court decision that cast doubt on the federal government's authority to permit some bands of Indians to create new reservation land.

In Rhode Island Gov. Donald Carcieri v. Interior Secretary Kenneth Salazar, the court held that the Interior Department can take land into trust on behalf of tribes only if those tribes were under federal jurisdiction as of 1934 when Congress passed the Indian Reorganization Act.

California is home to 109 tribes, far more than any other state. Some were organized after 1934. Newly reconstituted bands are seeking formal recognition from the U.S. Interior Department. Once recognized, tribes will seek reservation land where none currently exists. In California, that means new casinos.

California voters have spoken repeatedly that tribes have a right to own casinos. California is well on its way to becoming the biggest gambling state in the union.

That makes it even more vital that Congress, working with tribes and state and local officials, hold open hearings on the issue – and not pass a rider that by its nature is hidden from public view.

The California State Association of Counties has raised serious questions. We agree with the counties: There must be clearly defined public standards for deciding where land can be acquired.

The federal government needs to provide basic information about pending decisions and seriously consider the public's legitimate concerns. Importantly, the Interior Department should not be able to hide behind immunity against lawsuits when it makes bad decisions.

California is well-represented on Capitol Hill. Speaker Nancy Pelosi needs to block the rider pending in the Interior appropriations bill. Sen. Dianne Feinstein and Sen. Barbara Boxer need to intervene, too, and stand up for full public vetting of the issue.

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Attachment Five  
Supervisor Diane Dillon's Letter to Speaker Pelosi



A Tradition of Stewardship  
A Commitment to Service

**Board of Supervisors**

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**Diane Dillon**  
Chair

August 23, 2010

Hand Delivered

Speaker Nancy Pelosi  
United States House of Representatives  
235 Cannon House Office Building  
Washington, D.C. 20515-0508

Dear Speaker Pelosi,

I enjoyed seeing you on Sunday at Mike Thompson's event and appreciated the opportunity to briefly discuss county government opposition to the *Carcieri* policy issue being moved through the appropriations process. As I mentioned, the "*Carcieri* fix" was recently attached as a rider to the House Interior Department Appropriations bill by Congressman Cole. I understand a similar attempt to attach this important policy matter as an amendment to the Senate Interior funding bill will be made after the recess by Senator Dorgan. *The appropriations process should not be subverted by attaching this critical policy matter to a funding bill to avoid scrutiny and full policy discussion.*

The California Association of Counties ("CSAC"), the National Association of Counties ("NACo") and our local Northern California Tribal Matters Consortium (Sonoma, Napa, and Solano Counties) all are on record as strongly opposing the "quick fix" to overturn the Supreme Court's decision, which "fix" would leave the fee to trust process fundamentally broken. The message carried to Congress by the NACo resolution opposing the *Carcieri* "quick fix" – unanimously adopted by representatives of counties coast to coast – is that the current trust system is broken and should not be extended but fundamentally reformed, and that reform must meaningfully address impact to local governments and communities. Local governments are interested in working with tribes to address their concerns (although the BIA has refused to provide information regarding how many tribes are actually adversely affected by the *Carcieri* decision) while also ensuring that basic reforms such as appropriate notice and clear standards are made to the trust process. We believe such changes will ultimately benefit both tribes and local government. *These improvements and important discussions will never take place if the matter is simply embedded as a sentence in the appropriations bill.*

**Brad Wagenknecht**  
District 1

**Mark Luce**  
District 2

**Diane Dillon**  
District 3

**Bill Dodd**  
District 4

**Keith Caldwell**  
District 5



Speaker Nancy Pelosi  
August 23, 2010  
Page 2

The “*Carcieri* quick fix” does not repair the broken fee to trust system, which is one reason it has not moved forward as a policy matter. The problem should not be ignored by improperly attaching this important issue to an appropriations bill. The counties stand ready to work in good faith on this issue and I would be happy to discuss the matter further with you or your staff.

Thank you again for your interest on this important issue and for maintaining an appropriate appropriations process.

Very truly yours,

A handwritten signature in black ink that reads "Diane Dillon". The signature is written in a cursive, flowing style.

Diane Dillon  
Chair of the Napa County Board of Supervisors

cc: Members of the California Delegation, United States House of Representatives  
The Honorable Dianne Feinstein, United States Senate