



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



MAR 12 2009

Memorandum

To: Regional Directors

From: George T. Skibine
Deputy Assistant Secretary for Policy and Economic Development
Office of the Assistant Secretary Indian Affairs

Subject: Application of the Holding in *Carcieri v. Salazar* to Pending Requests to Acquire Land-In-Trust

On February 24, 2009, the United States Supreme Court issued its decision in *Carcieri v. Salazar*. The decision held that Congress granted limited authority to the Secretary of the Interior under the Indian Reorganization Act (IRA) to acquire land-in-trust for Indian tribes. To acquire land-in-trust under section 465 of the IRA, a tribe must have been "under Federal jurisdiction" at the time the IRA was passed in June 1934. The Court did not define the phrase "under Federal jurisdiction."

The Department in consultation with the Solicitor's Office is reviewing the decision to determine the scope of its impact and how best to proceed with processing applications to acquire land-in-trust. **To assist in this review, I ask that the Regional Directors provide the information identified below to my Office by March 20, 2009.** In addition, this memorandum provides guidance for processing pending applications to acquire land-in-trust.

Needed Information

The following information is needed from the Regional Offices to identify tribes that may be impacted by the *Carcieri* decision. Please compile a list that identifies:

1. Tribes that were federally acknowledged under 25 C.F.R. Part 83, restored or reaffirmed after June 1934, and any specific land acquisition authorities for those tribes;
2. Tribes with an organizational history that raises any question about whether they were under federal jurisdiction in 1934;
3. Whether those tribes identified above have had land taken in trust;
4. The total number of acres and location(s) of land taken in trust for those tribes;
5. The date(s) that lands were acquired in trust for those tribes;

6. The current use of those trust lands (e.g., housing, grazing, commercial leasing, etc.);
7. Which of those lands have gaming facilities already operating or planned for operation; and
8. In whose name were the deeds titled before they were transferred to the United States in trust (i.e., did the United States, the tribe or a third party hold title prior to the land being held in trust?)

One source that can be used to assist in determining whether a tribe was under Federal jurisdiction is the report *Ten Years Of Tribal Government Under The Indian Reorganization Act* by Theodore H. Haas (1947). While this is not the only or finally determinative source, it may be helpful as a starting point. Until a complete list of criteria can be developed about what constitutes "under Federal jurisdiction" in 1934, please provide any information that may be helpful in making that determination. Please consult with the Regional Tribal Operations staff while compiling this information.

Guidance for Processing Pending Applications

Please adhere to the following guidance in processing pending applications to acquire land in trust under 25 U.S.C. § 465:

1. For those tribes where there is no question that they were under Federal jurisdiction in 1934, continue processing the applications as usual.
2. For those tribes with an organizational history that raises any question about whether they were under Federal jurisdiction in 1934, seek advice from the Solicitor's Office as to the effect of the *Carcieri* decision on those tribes. It may be possible to continue processing the applications while legal advice is being sought. No final decision should, however, be made and no deeds should be approved until it has been determined whether or not they were under Federal jurisdiction in 1934.
3. For those tribes that were federally acknowledged under 25 C.F.R. Part 83, restored or reaffirmed after June 1934, seek advice from the Solicitor's Office before continuing to process the applications.
4. For those tribes which have specific land acquisition authority other than 25 U.S.C. § 465, continue processing applications because they are not affected by the *Carcieri* decision.

If you have any question about the applicability of the *Carcieri* decision to pending applications, please seek the advice of the Solicitor's Office before proceeding.