

Panel Evaluates Policy Options on Trust Land Acquisition

Legal Uncertainty Continues Following 2009 Supreme Court Ruling

FOR IMMEDIATE RELEASE: July 13, 2017

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Washington, D.C. – Today, the Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing to review the Department of the Interior's (DOI) policies governing the acquisition of land into trust for Indian tribes. The Indian Reorganization Act of 1934 (IRA) delegates broad authority to the Secretary of the Interior to acquire land in trust for Indians.

The 2009 Supreme Court decision, *Carcieri v. Salazar*, held that the Secretary may not acquire land for Indians pursuant to the IRA unless they are members of a tribe that was "under federal jurisdiction" at the time the law was passed.

The panel explored whether DOI has implemented the IRA in accordance with the intent of Congress and within the limits defined by the 2009 decision, and the need for statutory changes to bring legal clarity to trust land acquisition policy.

Acting Deputy Secretary of the Interior James Cason outlined concerns with the Obama Administration's actions following the 2009 decision. The 2014 Legal Memorandum from the Solicitor of Interior that now governs revised procedures for trust land decisions, Cason said *"doesn't respond very particularly to the Supreme Court decision."*

Containing no limits, standards or even non-binding guidelines, the IRA provides vast authority to an unelected bureaucracy at DOI. It remains unclear how many lands have been acquired under the IRA or where all such lands are precisely located.

Witness Don Mitchell, an attorney from Anchorage, Alaska, who has been involved with Native American policy and legal issues since 1974, discussed a 1995 U.S. Court of Appeals decision that declared the IRA *"an unconstitutional delegation of authority to an executive branch department"* as the statute *"contains no judicially identifiable and enforceable standards that limit [DOI's] exercise of the authority."*

Members on the committee agreed on the need to bring legal certainty and procedural consistency to the trust land acquisition process.

"I appreciate the committee's willingness to look back at what happened so we can discuss a responsible path forward that upholds Congress' constitutional authority and ensures tribal sovereignty," Rep. Jeff Denham (R-CA) stated.

"The issue of being able to have land in trust is a very important cornerstone with the ability of tribes to have autonomy, self-determination and for their sovereignty,"

Subcommittee Chairman Doug Lamalfa (R-CA) said.

Whether through statutory change or administrative action, LaMalfa emphasized the need *“to give that certainty to [tribes].”*

“The discussion today is finding the [right] balance after taking a snapshot of what was done 80 years ago. We’re looking back at that to see if there are course corrections to make here,” **LaMalfa explained.**

Chairman Rob Bishop (R-UT) asked the panel to offer recommendations *“as to what this subcommittee or Congress could do to bring coherence and some kind of certainty to the trust acquisition policy.”*

Click [here](#) to view full witness testimony.