Stand Up For California!
"Citizens making a difference"
www.standupca.org

P.O. Box 355
Penryn, CA 95663

October 27, 20009

Honorable Nick J. Rahall, II
Chairman Natural Resource Comm.
2307 Rayburn House
Washington, D. C. 20510
Fax: 202-225-9061

Honorable Doc Hastings
Vice Chair Natural Resource Comm.
1203 Long worth House
Washington D.C. 20510
Fax: 202-225-3251

Honorable Dale E. Kildee
2107 Rayburn House
Washington, D.C. 20510
Fax 202 225-6393

RE: AS WRITTEN: H.R. 3742 facilitates tribes seeking off reservation casinos

Dear Chairman Rahall, Vice Chair Hastings and Congressman Kildee:

Stand Up For California! is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming and the state lottery. We have been involved in the ongoing debate of issues raised by gaming and its impacts for over a decade. Since 1996, we have assisted individuals, community groups, elected officials, and members of law enforcement, local public entities and the State of California with respect to gaming. Additionally, we are recognized and act as a resource of information to local, state and federal policy makers.

Thank you for scheduling a hearing on legislation by Congressman Kildee to put forward a Carcieri Fix. H. R. 3742 seeks to amend the word "now" ruled on in the *Carcieri v. Salazar* case by the U. S. Supreme Court on Feb. 24, 2009. Additionally, the language seeks to address tribal concerns over the definition of Indian and Indian Tribe found in Section 19 of the Indian Reorganization Act (IRA) which has stalled many fee to trust acquisitions for housing and economic development. Clearly, this is an issue that needs civilized debate and reform.

Stand Up For California! views the need for a fix as necessary. There is no objection to the fact that we need language that clarifies the Department of the Interior's authority under the IRA. However, it would appear the language of H.R. 3742 as currently drafted is advocated by tribes affected by the Carcieri ruling without regard to the necessary balancing of authority between

states, tribes and local governments. Moreover, the language as written fails to meet the justifiable expectations of citizens that land use, zoning and the administration of justice will remain similar in character to any land that is proposed for a fee to trust transfer.

Without doubt, the language of H. R. 3742 facilitates tribes seeking off reservation casinos. Congressman Kildee's language will further exacerbate California tribal claims rather than help.

H.R. 3742 Inserts: Section B provides the Secretary with authority to acquire lands for ***"any federally recognized Indian tribe".*** This language indirectly references the" List Act of 1994" and does not resolve the legal status of tribes in California.

Many California tribal groups qualify for gaming due to the 1994 Technical Amendment authored by U. S. Senator John McCain, which he represented at the time as non-controversial. The unintended consequence of Senator McCain's "List Act" in California relates to Rancheria lands. Many Rancheria Bands began to organize for the very first time in order to promote casinos both on and off reservation in 1994. In essence, the 1994 McCain amendments to the Indian Reorganization Act of 1934 granted "class recognition" to questionable tribal groups, which set the stage for off-reservation gaming in California.

The amendment was intended to prohibit the Secretary or any other Federal official from distinguishing between Indian tribes or classifying them not only on the basis of the IRA but also on the basis of any other Federal law. Other agencies of the Federal Government may have developed distinctions or classifications between federally recognized Indian tribes based on information provided to those agencies by the Department of the Interior. The amendment to section 16 of the IRA is intended to address all instances where such categories or classifications of Indian tribes have been applied and any statutory basis which may have been used to establish, ratify or implement the categories or classifications.

However, there was never a debate over Californian Indian lands and yet this affected over 60 Rancheria tribal groups. This allowed some tribal groups with questionable status or ties to land to re-organize and begin to promote off reservation casinos with ever-clever gaming investors from out-of-state and off-the-continent.

It appears the intent and spirit of this federal legislation was to prevent Tribes from being treated differently by federal offices and agencies. There are "historic tribes" and then there are "created tribes". For the most part, California Rancheria Tribes fall into the category of "created tribes". Obviously, on its face this language was intended to promote consistency in federal Indian policy. But California Indian issues are unique in the nation. California needs its own fix.

H.R. 3742 inserts: Section (B) (2) defines Indian tribe. "In this Act, the terms "Indian tribe" and "tribe" mean any Indian or Alaska Native tribe band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe."

Here again the language fails to address the larger issue. Congress has not delegated the authority to "recognize, acknowledge or restore" Tribes to the Department of the Interior. Nevertheless, the Department of the Interior on its own, in 1978 developed regulations (25 C.F.R. part 83) for just that purpose. The Department of the Interior has asserted that 5 USC 301 and 25 USC 2 and

9 have delegated to the Secretary of the Interior the authority to recognize tribes. Nonetheless, the plain language of the statutes contains no delegation of authority to recognize new tribal governments.

Is it the intent of this Committee, to authorize the Secretary of the Interior with unlimited power to determine who is and who is not an Indian Tribe without debate?

Even in the 101st Congress, Congressman George Miller, Congresswoman Pelosi, Congressman Duncan Hunter and Senator Barbara Boxer all of California recognized the need to establish administrative procedures and guidelines to clarify the status of certain Indian tribes in California. The Secretary of the Interior acknowledged that in reviewing and evaluating particular Indian group's status there were significant questions for various reasons. Further complicating these issues the status of other California Indian groups had been acknowledged, restored or defined by legislative or judicial action, thus creating inconsistent standards.

> "The U.S. Constitution contemplates that the extension or termination of recognition by the United States to any Indian tribe is a political question and matter with the sole authority of the Congress and NOT with the powers vested in the judicial branch, but delegable to the executive branch of the Federal Government."[1]

That delegation has not yet occurred. This affects not only the regulations developed for 25 CFR Part 83, and all the tribes recognized since 1934 but also the new IGRA section 20 rules which include language defining restored lands which is the major problem of off reservation gaming in California.

- If Congress is going to authorize the Secretary of the Interior with this unlimited authority, shouldn't there be consideration of limitations and a process for all affected parties to participate in?
- Shouldn't there be some explicit delegation of well defined authority?

H.R. 3742 is a quick and inadequate fix that facilitates off reservation gaming by tribes making claims of land outside of tribe's historic aboriginal lands. In California this will exacerbate tribal claims and relationships with the states, local government and the neighbors next door. This is not a fix this is a social-cultural disaster.

States, counties, cities, communities and public interest groups even some of California's historic tribes recognized by Congressional Action as early as 1891 are seeking reform. California is unique in the nation with its Indian issues and requires a programmatic policy that to the greatest extent possible provides for all affected parties to participate in an open, fair and objective process.

Stand Up For California! is providing for you suggested language for your consideration that would help to alleviate "reservation shopping" by casino interests. The proposed language provides clarity and limitation to Secretarial authority with "objective standards" that restores the delicate balance of authorities between states, tribes and local governments. Please give our suggested language your consideration.

---

[1] 101st Congress 2d Session H. R. 5436 August 2, 1990, Page 2 at (2).

Sincerely,

Cheryl Schmit, Director
916-663-3207
cherylschmit@att.net
www.standupca.org

CC: California Congressional Representatives on Natural Resource Comm.

Attachment: Suggested language

Proposed Language for a "Fix"

Currently, off-reservations land acquisitions fall under: **25 United States Code of Federal Regulations: § 151.11 Off-reservation acquisitions.** [60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995] That regulation includes some key direction that the Secretary of Interior should be given in any statute that authorizes taking land into trust for a post-1934 tribe.

Therefore, here is a proposed statute that includes the direction of the current regulation:

(1) The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of, *whether contiguous or* noncontiguous to the tribe's reservation *or rancheria, by any tribe, whether recognized before or after 1934*, and the acquisition is not otherwise mandated by a separate congressional act:

(a) The purposes for which the land will be used;

(b) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls, as well as the acquisition's potential impacts on regulatory jurisdiction, public safety, environmental protection, real property taxes and special assessments;

(c) The location of the land relative to state boundaries and its distance from the boundaries of the tribe's *existing or former rancheria, trust allotments or* reservation shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition.

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land is to be acquired for an Indian tribe, the amount of reservation, trust or restricted land already held for that tribe and the degree to which the tribe will require assistance in management of the land, i.e. fire protection, law enforcement services, etc.

(2) Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall promptly notify the state and local governments having regulatory jurisdiction over the land to be acquired, as well as those nearby who could reasonably be expected to experience the impacts of development on new trust lands. The notice shall provide to the state and

local governments the tribe's complete written request, less privileged proprietary information relating to proposed commercial activity and trade secret information. The notice shall fully disclose the general nature and extent of proposed uses and activities, including timing, location, scope, duration and purposes of such uses, The notice shall inform the state and local government that each will be given a reasonable time in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, public safety, environmental protection, real property taxes and special assessments.

(3) After receiving comments, the Secretary shall consult with the Indian tribe and the appropriate State and local officials, including officials of other nearby Indian tribes, and the surrounding communities of citizens. Before taking land into trust under this section, the Secretary shall determine that the taking of the land into trust would not be detrimental to the interests of the surrounding community, and the Governor of the State concurs in that determination.

(4) Where land is being acquired in trust for a business purpose, the tribe shall provide a plan to the Secretary which specifies the anticipated economic benefits associated with the proposed use. Should a tribe wish to change the use of the land in the future, the tribe shall advise the Secretary, as well as state and relevant local jurisdictions. The Secretary may disapprove of the change in use, or otherwise require the tribe to submit the proposed use to affected state and surrounding local jurisdictions for consideration and to adopt land use mitigations commensurate with state and local land use standards. A tribe applying for use of trust land for purposes of gaming separately shall comply with the requirements of section 2719 of Title 25.

(5) The United States District Court shall have jurisdiction to review any claim brought under this section that the Secretary failed adequately to consider the objections of state and local governments in the process of taking land into trust.

###