

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAÚL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BILL JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

Mr. Donald "Del" Laverdure
Principal Deputy Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Mr. Laverdure:

I am writing to thank you for appearing before the Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs legislative hearing on Tuesday, July 12, 2011 to present testimony on:

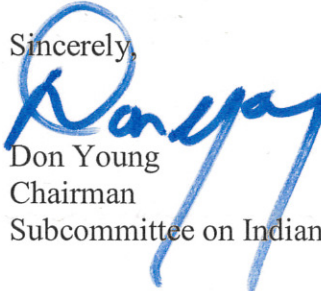
- H.R. 1291(Cole) to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes; and
- H.R. 1234(Kildee) to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.

Your testimony was extremely helpful in defining the Committee's understanding of the issues and I appreciate the effort you took to prepare and present your testimony. While many questions were asked during the hearing, the Committee has additional questions, attached, for your reply.

Please forward your responses to Todd Young, Chief of Staff, Committee on Natural Resources or Chris Fluhr, Staff Director, Subcommittee on Indian and Alaska Native Affairs, at 1337 Longworth House Office Building, by **Tuesday, August 9, 2011**.

Once again, thank you for your extensive effort in making this a valuable hearing.

Sincerely,



Don Young
Chairman
Subcommittee on Indian and Alaska Native Affairs

Enclosure

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, OR
PETER A. DEFazio, OR
ENI F.H. FALCOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAÚL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILLI CAMACHO SABLÁN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

Questions from Chairman Doc Hastings:

In a January 19, 2010, letter to the Chairman of the Natural Resources Committee, the Department of the Interior (Department) submitted written responses prepared by the Bureau of Indian Affairs to questions submitted pursuant to the November 4, 2009, hearing on H.R. 3742 and H.R. 3697. Responses to the first six questions were either refused or not fully provided. Below is a re-statement of those questions with some modifications, which are hereby asked in relation to the Committee's review of H.R. 1291 and H.R. 1234, with additional questions regarding the impact of *Carcieri v. Salazar*. Complete, up-to-date responses will be appreciated.

1. Has the Department determined which tribes, on the latest list of recognized tribes annually published in the *Federal Register* (pursuant to the Federally Recognized Indian Tribe List Act of 1994), were not under federal jurisdiction on June 18, 1934?
2. If so, what criteria were used to make such a determination that a tribe was not under federal jurisdiction on June 18, 1934? Within the Department, who has made the determination as to which tribes were not under federal jurisdiction on June 18, 1934?
3. If an actual determination has not been made, has the Department prepared a list of tribes that may not have been under federal jurisdiction on June 18, 1934?
4. Has any determination made with respect to which tribes were under federal jurisdiction on June 18, 1934?
5. Has the Department shared any list described in the previous questions with any Committee of the Congress, or other persons or organizations outside of the Department? Would the Department provide the list, or lists, to this Committee for review?
6. Has the Department assessed how many parcels and/or acres of land the Secretary of the Interior acquired in trust pursuant to Section 5 of the Indian Reorganization Act (as amended) for tribes not under, or possibly not under, federal jurisdiction on June 18, 1934? If so, how many such acres in total were placed in trust prior to the Carcieri decision?
7. If the Department has compiled an analysis of affected acreage, has it assessed the current use of such lands (i.e., housing, schools, health clinics, government facilities, economic development or business enterprises, gaming, agricultural or forestry purposes, etc.)? If so, would the Department provide the compilation to the Committee for review?
8. During the hearing the Deputy Assistant Secretary estimated there have been around 450 fee-to-trust "transactions" since the Supreme Court's *Carcieri* holding was made in February 2009. Were these transactions approvals of fee-to-trust applications? Were they for the benefit of tribes or individuals? Which tribes? Approximately how many acres of land were placed in trust and what are the purposes of the trust lands for?
9. Please describe the process used by the Department for undertaking the fee-to-trust transactions identified in question 7. In the case of a tribal trust transaction, who makes the legal determination that the beneficiary tribe was recognized and under federal jurisdiction on June 18, 1934, and how is such a determination made?

10. In the hearing, several witnesses acknowledged there is an absence of standards or policy guidance for taking lands in trust under Section 5 of the IRA. Does the Department support establishing standards in this 1934 Act through legislation?

Questions from Chairman Hastings on behalf of Mrs. Herrera Beutler:

1. In *Carcieri v. Salazar* the U.S. Supreme Court stated that the federal government cannot take land into trust for tribes that were recognized after 1934. The Cowlitz Tribe was recognized in 2000. What justification, if any, does the Bureau of Indian Affairs (Bureau) have for ignoring this ruling and allowing the Cowlitz Tribe to purchase this land?
2. The Bureau's decision was objected to by the City of La Center, the City of Vancouver, and Clark County, Washington. This is a highly controversial proposal, in no small part because questions have been raised as to the Tribe's historical connection to Clark County. I would like to understand if the Bureau is allowing a Tribe to acquire land outside of its historical lands, and if so, under what authority.
3. On May 14, 2008, Clark County took action that resulted in the land surrounding the potential gaming site to be zoned for agricultural purposes. Construction on this land will cause significant, unmitigated land use impacts. Why are state and local land use laws being ignored to allow the construction of a Casino by a tribe that has questionable historical connections to the land?
4. Concerns have been raised that this decision was inappropriately influenced from the start of the process. It is my understanding that the Tribe paid for the government's environmental and economic study and was highly engaged in the drafting and editing of the study. Further, when it appeared that the Bureau would have problems justifying the acquisition under the Tribe's original "restored lands" theory, the Department switched legal theories at the last minute to a new "initial reservation" theory. Are my understandings accurate, and if so, please provide a justification for these actions.

Questions from Mr. Lujan:

1. I want to point the need for a *Carcieri* fix and to quell some of the mistruths out there about the proposed legislation offered to provide the Secretary of interior the ability to take land into trust for Native American tribes.

Some who oppose this fix have tried to tie the legislation offered by Congressmen Cole and Kildee, which would give the Secretary of Interior a clear authority to take land into trust, with Indian gaming and federal recognition. Mr. Laverdure, Can you please tell us what laws govern both Indian gaming and federal recognition, and whether the Department believes that there is any connection between these issues? And why is it important for the Secretary to have the ability to take land into trust?

2. Mr. Laverdure, One of the primary goals of the Indian Reorganization Act (or the IRA) was to reverse the failed federal policy of Allotment, under which Indian tribes lost or had taken more than 100 million acres of tribal homelands. The Interior Department

processed tribal "land into trust" applications under the IRA for 75 years prior to the Carcieri decision by the Supreme Court. Can you please tell us how much land was restored to tribal control? In the Department's opinion, do you believe that the goals of the IRA have been met, and if the law is no longer necessary?

3. Some witnesses here today will testify that there is no need to reform the existing land into trust process because state and local units of government do not have a voice in the process. Can you please explain the role and to what extent, that state and local governments play in the tribal land into trust process under the Interior Department's 25 C.F.R 151 regulations?

Questions from Mrs. Hanabusa:

1. In your testimony before the Committee you reference the Department's regulation 25 C.F.R. § 151.1 which provides, "[t]hese regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members."

It is my belief that we do have a group of tribes in Alaska, either the 230 plus tribes that you referenced in your testimony or the Metlakatla tribe that is specifically mentioned in the Department's regulations, that need additional clarification on their status as a tribe. Thus why then is H.R. 1291 not a cleaner legislative fix to the Supreme Court's Carcieri decision?