

Law Offices  
of  
TIM MOORE

707 TORRANCE BOULEVARD, SUITE 220  
REDONDO BEACH, CALIFORNIA 90277-3492

TELEPHONE (310) 540-1700  
FACSIMILE (310) 540-8652

E-MAIL: TMRE9137@aol.com

March 4, 2009

RE: CARCIERI v. SALAZAR

The United States Supreme Court issued its opinion in *CARCIERI v. SALAZAR*, 555 U.S. \_\_\_\_\_, 2009 last week. This decision is likely to have an important impact on the Colorado River Indian Tribes (CRIT) and the dispute over the proper location of the western boundary of the CRIT Reservation. The decision will probably have an immediate affect on the *Water Wheel* litigation.

The case involved the ability of the Secretary of the Interior to take land into trust for the benefit of an Indian tribe. In essence, the Supreme Court ruled that the Secretary of the Interior must comply with the Congressional authorization before property can be taken into trust status. Failure to comply with the authorizing statute renders any Secretarial action void.

The factual and legal development is best understood by reading the entire case. It is relatively short and is easily understood.

The Court stated that: "... (a) When a statute's text is plain and unambiguous, *United States v. Gonzales*, 520 U. S. 1, 4, the statute must be applied according to its terms, see, e.g., *Dodd v. United States*, 545 U. S. 353, 359." In 1864, Congress passed "An Act to provide for the better organization of Indian Affairs in California," the Four Reservations Act, Act of April 8, 1864, 13 Stat. 39. Hereafter, the Four Reservations Act, or the 1864 Act. The Four Reservations Act precludes the existence of the CRIT Reservation in California without specific Congressional authorization. There has never been any assertion that the 1864 Act is ambiguous, and there has never been any specific Congressional authorization for the expansion of the CRIT Reservation into California. *Carcieri* confirms that the 1864 Act must be applied to the CRIT dispute "according to its terms." The Supreme Court clarified a court's responsibilities in applying statutory language when it stated:

"This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous. *United States v. Gonzales*, 520 U. S. 1, 4 (1997). If it is, we must apply the statute according to its terms. See, e.g., *Dodd v. United States*, 545 U. S. 353, 359 (2005); *Lamie v. United States Trustee*, 540 U. S. 526, 534 (2004); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000); *Caminetti v. United States*, 242 U. S. 470, 485 (1917)."

The starting point for applying basic principles of statutory construction to the CRIT boundary dispute would be the 1864 Act. As already stated, it has never been argued that it is ambiguous. CRIT has asserted that it was overridden, but has failed to provide any authority for this self-serving assertion. *Carcieri* tells us that if this statute is not ambiguous a court must apply it as it is written. In *Carcieri*, the Supreme Court stated: "... courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U. S. 249, 253-254. Pp. 7-13.

On April 30, 1964, Congress passed Public Law 88-302, 78 Stat. 188, hereafter, PL 88-302 or the 1964 Act. CRIT has argued that Public Law 88-302 somehow supersedes the 1864 Act, and is the authorization for the CRIT Reservation's expansion into California. In *Carcieri*, the Supreme Court reaffirmed arguments made against CRIT's position in the *Water Wheel* litigation when it stated:

"Consistent with our obligation to give effect to every provision of the statute, *Reiter*, 442 U. S., at 339, we will not assume that Congress repealed the plain and unambiguous restrictions on the Secretary's exercise of trust authority in §§465 and 479 when it enacted §2202. "We have repeatedly stated . . . that absent 'a clearly expressed congressional intention,' . . . [a]n implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'" *Branch v. Smith*, 538 U. S. 254, 273 (2003) (plurality opinion) (quoting *Morton v. Mancari*, 417 U. S. 535, 551 (1974), and *Posadas v. National City Bank*, 296 U. S. 497, 503 (1936))".

There has never been any serious question that PL 88-302 did nothing other than allow CRIT to lease on land it occupied in 1964. The Supreme Court has now confirmed, what we have always argued, that is, the 1864 Act was not superseded, or in any way diminished in its affect, by a law that was only intended to allow CRIT authority for leasing on land it occupied in 1964. There is no "irreconcilable conflict" between a law that limits the number of Indian reservations in California, and one that only allows CRIT to lease on land it occupied in 1964. Public Law 88-302 does not even mention the subject of the number of Indian reservations in California; it cannot be said that it covers the "whole subject of" Indian reservations in California. It certainly does not express any intent that it is a substitute for the 1864 Act. In fact, PL 88-302 fails to even mention the 1864 Act.

Public Law 88-302 contains the "now occupied" requirement in its section one. *Carcieri* contains an extensive discussion of the meaning and impact of statutory language. CRIT has argued that this language should be ignored. In *Carcieri*, the Supreme Court stated:

"When Congress has enacted a definition with "detailed and unyielding provisions," as it has in §479, this Court must give effect to that definition even when "it could be argued that the line should have been drawn at a different point." *INS v. Hector*, 479 U. S. 85, 88-89 (1986) (*per curiam*) (quoting *Fiallo v. Bell*, 430 U. S. 787, 798 (1977))."

The 1969 opinion from the Secretary of the Interior allowing CRIT control over land south of Riverside Mountain in California was not authorized by the Congress. The United States Supreme Court has already rejected the Secretary's opinion on the proper location of the western boundary of the CRIT Reservation. *Arizona v. California*, 460 U.S. 605 (1983). *Carcieri* also confirms that proper Congressional authorization is essential for Secretarial actions. Secretarial actions, like the 1969 opinion, are void if they are not a properly authorized action based on the words of their Congressional authorization.

The Secretary of the Interior has allowed CRIT to engage in leasing activities in California without making any attempt to determine if CRIT 'occupied the property in 1964'. Occupation of property in 1964 is a prerequisite to the leasing authority of PL 88-302. Both CRIT and the Secretary of the Interior have ignored this critical part of Public Law 88-302. *This is a violation of the Congressional authorization very much like the violation that was the basis of the litigation in Carcieri.* In *Carcieri*, the Supreme Court found that the Secretary's actions were void for lack of Congressional authorization.

When the same reasoning and conclusions discussed in *Carcieri* are applied to the CRIT boundary dispute, it is apparent that there is no sound legal basis for the Secretary of the Interior to continue to support CRIT's efforts to exert control over any California land. This is particularly true when the Secretary's actions not only lack Congressional authorization, but are also in clear violation of the express, unambiguous mandate of Congress as set forth in the 1864 Act.

Strict statutory interpretation, like that applied in *Carcieri*, would conclude that the 1864 Act controls the establishment of Indian reservations in California. CRIT is not one of the authorized reservations. Public Law 88-302 did not override the 1864 Act. The courts are required to implement the provisions of the 1864 Act as it is unambiguous, and does not conflict with the leasing authorization of Public Law 88-302. The 1969 Secretary's opinion was not authorized by Congress, is in violation of the 1864 Act, and is void.

It is far past time for the injustices perpetuated by the Interior Department and CRIT to cease. There is no lawful basis for California land and its citizens to continue to be the subject of harsh and unfair treatment by a U.S. Government agency and CRIT. The actions of CRIT, supported by the Interior Department, are in clear violation of the controlling law.

Sincerely,

LAW OFFICES OF TIM MOORE

TIM MOORE  
Attorney At law

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