



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

NATIONAL INDIAN GAMING ASSOCIATION RESOLUTION #2-PHX-AM-4-15-09

TITLE: To Call Upon the United States to Defend All Indian Trust Lands of All Indian Tribes from Any Third Party Claims and to Seek Legislation to Address the Supreme Court decision in *Carcieri v. Salazar*.

WHEREAS, the National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes established to support Indian gaming and defend Indian sovereignty; and

WHEREAS, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands, and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

WHEREAS, the Indian Gaming Regulatory Act (the “IGRA”) acknowledged and confirmed the inherent sovereign powers of Tribal Governments; and

WHEREAS, On February 24, the Supreme Court held in *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009) that the Secretary of the Interior lacks authority to take land into trust under the Indian Reorganization Act (25 U.S.C. secs. 465, 479) for Indian tribes that were not under Federal jurisdiction at the time of its passage in 1934; and

WHEREAS, the *Carcieri* decision interferes with trust land acquisitions for Indian tribes who, arguably, were not under Federal jurisdiction in 1934 and may give rise to Federal court challenges to the Indian trust lands of such Indian tribes and so threaten Indian lands; and

WHEREAS, the United States has wrongfully divested Indian tribes of far too much of our aboriginal homelands; and

WHEREAS, to address some of the wrongful policies of the 19th Century and early 20th Century, including removal, allotment and forced assimilation of Indian tribes, President Franklin D. Roosevelt announced the “New Deal” for Indian tribes through the Indian Reorganization Act (IRA), which was enacted to provide the Secretary with authority to acquire lands in trust for Indian tribes and Indians; and

WHEREAS, *Carcieri* overturns nearly 75 years of settled Indian trust land law by limiting the Secretary’s authority to acquire land in trust for Indian tribes “now under Federal jurisdiction” in 1934 at the time of the IRA’s passage; and

WHEREAS, Federal law immunizes Indian trust lands from state taxation and it shields tribal members from state and local regulation on trust land. With respect to such lands, the power to tax and regulate is vested in the federal government and the tribes themselves; and

WHEREAS, the United States has sovereign immunity from challenges to title to land held by the United States except as provided in the Quiet Title Act and a plaintiff must “set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property [held by the United States and] the circumstances under which it was acquired,” 28 U.S.C. sec. 2409(d); and

WHEREAS, in the Quiet Title Act, Congress considered the Federal trust responsibility to protect Indian trust lands and reserved its sovereign immunity from any challenges to Indian trust lands; the House Committee Report explains that Congress reserved the United States’ sovereign immunity from claims against Indian trust lands because:

The Federal Government’s trust responsibility for Indian lands is the result of solemn obligations entered into by the United States Government. The Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against abridging the historic relationship between the Federal Government and the Indians without the consent of the Indians; and

WHEREAS, plaintiffs lack standing to bring claims under the Quiet Title Act unless they have an actual claim of right, title or interest in the land held by the United States, and there is a 12 year statute of limitations for claims against the United States under the Quiet Title Act; and

WHEREAS, the Constitution of the United States, as noted above, establishes that the Federal Government has jurisdiction over Indian affairs and that the United States has, through treaty, agreements, statutes, and executive orders pledging protection for Indian tribes, extended its jurisdiction over Indian lands;

NOW THEREFORE BE IT RESOLVED, that the United States established through treaties, agreements, statutes, and executive orders, that the Federal Government has a trust responsibility to protect *all* Indian trust lands of *all* Indian tribes from *any* third party claims; and

BE IT FURTHER RESOLVED, that the United States, acting through the Secretary of the Interior and the Attorney General, must vigorously defend any third party claims against any Indian lands held in trust by the United States on the basis of its sovereign immunity, plaintiffs' lack of standing, statute of limitations, the constitutionally based jurisdiction of the United States over Indian affairs and the historical fact that all Indian tribes (regardless of when officially recognized under contemporary law) existed prior to the United States; and

BE IT FURTHER RESOLVED, that the United States should recognize that all Indian tribes pre-date the United States and were "under Federal jurisdiction" in 1934 because the President and Congress had pledged to protect Indian tribes and Indian lands through treaties, statutes, agreements, and executive orders since the formation of the United States and the Secretary of the Interior must control career agency bureaucrats and must not establish any lists that suggest that certain Indian tribes were not under Federal jurisdiction and protection in 1934; and

BE IT FURTHER RESOLVED, that NIGA will work with NCAI and other regional organizations to coordinate efforts to ensure a *Carciere* fix that reaffirms the inherent sovereign powers of all Tribal Governments; and

BE IT FINALLY RESOLVED, that the President and Congress must act immediately to reverse the wrongly decided *Carciere* case by adding the phrase "or hereafter" after the word "now" (or alternatively by striking completely the phrase "now under Federal jurisdiction") in 25 U.S.C. sec. 479, and further, by ratifying any trust land acquisitions between 1934 and the date of enactment of a remedial statute, and by providing the Secretary with authority and direction to ratify other Federal decisions made under the IRA regarding any Indian tribe at the affected Indian tribe's request.