



CERF/CERA REPORT



MEMBER UPDATE

Sept. 2015

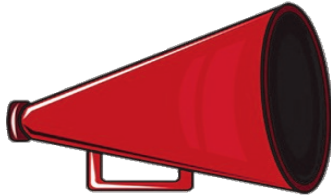
Vol. 11, No. 2

An Educational Publication of Citizens Equal Rights Foundation and Citizens Equal Rights Alliance



**A Message from the
Chair of CERA**
By Judy Bachmann

Federal Indian Policy is unaccountable, destructive, racist, and unconstitutional. It is, therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States.



**THIS CERF/CERF REPORT IS AN URGENT CALL FOR ACTION!!
FEDERAL INDIAN POLICY IS AT A CRITICAL STAGE AND MUST
BE ADDRESSED BY EVERY CITIZEN!!**

For years CERA/CERF has been reporting the overreach of the executive branch of the U.S. Government's Federal Indian Policy (FIP) into the everyday lives of U.S. Citizens. FIP has now reached a critical stage and must be addressed by everyone receiving this issue. Included in this issue are articles from SOME of the problem areas across the United States and new bills being proposed by both the senate and the house. Concerned citizens often ask *"what can I do"*. This issue addresses that question. If you agree or not, if it is in your back yard or not, **YOU** need to let your representative know how you feel. If problems are not in your back yard **NOW** and the proposed congressional bills are passed those problems **WILL** be in your back yard. **PLEASE!** Take the time to read and decide to act. Check the back page for how **YOU** can help.

Couldn't Believe My Eyes!

By Lana Marcussen

In Shawano County, Wisconsin a very nice lady and her husband (*photo to right*) have been told by the U.S. Attorney that the right of way granted in 1968 for their driveway to connect to the local road is no longer valid because the Stockbridge Munsee tribe did not specifically give its permission to cross a small strip of land adjoining the road. The U.S. Attorney says it doesn't matter that the Bureau of Indian Affairs, the tribal council and Congress itself approved the general right of way for all the people living along the road when it was straightened. The U.S. Attorney has filed suit against the Debroux claiming they have no valid property right to cross a small strip of tribal land placed into trust after the right of way had been granted.

This kind of abuse of federal authority has become the norm under the Obama Administration.

(continued on pg. 2)

AND SO WE WAIT

See pg. 2 for Minnesota
See pg. 3 for New York
See pg. 4 for California
See back page for
How to Help



The Demise of the Walleye Capitol of the World *By Clare Fitz*

This suit filed by the U.S. Attorney for trespass threatens the Debroux's ability to continue living on their land. The tribe really wants their land because a stunning natural waterfall exists on the property. What a great view for a tribal casino or hotel!

It would be bad enough if the Indian tribe were suing the Debroux's to contest whether the right of way in 1968 was properly done. But in this case everyone in the Tribal Realty office and Bureau of Indian Affairs knows this right of way was done correctly. In fact, when challenged the BIA realty officer admitted that the relevant information proving the existence of the right of way was in their files and she had been told to ignore it. After a fight the documents proving the right of way were provided under the Freedom of Information Act. The absolute proof from the BIA's own records should have ended this dispute once and for all. Maybe this is why the current complaint by the U.S. Attorney is worded so threateningly against the Debroux's. The suit is intended to threaten and intimidate so that the Debroux's will not defend their valid existing rights to continue to use their driveway.

This has become the main game of the Obama administration. Every new regulation and court case challenges what we have all assumed were our valid existing rights vested when jurisdiction was transferred from the United States to the State. All of our private property rights and enforceable personal rights against government derive from this simple but crucial process of the United States relinquishing the public lands and vesting the property to an individual subject to state jurisdiction. When the United States claims it has retained jurisdiction through a regulation it directly challenges our state vested valid existing rights.

The Debroux's case presents us with the facts we need to stop the Obama Administration from continuing to take away our property rights. The Debroux's' right of way is more than worth defending!

Please help us raise enough money to pursue this fight and win a big case against the authority of the Secretary of Interior to remove our state vested rights using federal regulations.

Thank you for your continued support!

In 1989, following a failed attempt to divide Mille Lacs Lake, located in central Minnesota, into a tribal zone and a non-tribal zone, like Red Lake in northern Minnesota, and to force the State of Minnesota to recognize the existence of the former disestablished Mille Lac Reservation, Chief Art Gahbow said in his annual address to his band, "As of now we are on the offensive. We are on the attack...the goal is to get back the original Mille Lacs...Reservation...One way or another, we will take it back...I want to have our 1937 treaty litigation underway within six months...all work hours, all business transactions, all contract negotiations will be aimed at one goal: Restoration of the Reservation lands...We are on the attack. There is no surrender."

The 1837 lawsuit resulted in the U.S. Supreme Court in a 4 to 5 decision ruling that the Mille Lac band and 6 Wisconsin bands have the right to hunt, fish and gather in the 1837 treaty area which includes Mille Lacs Lake and the former Mille Lac Reservation. The result is 7 Chippewa bands, using 100 ft. gill nets to capture walleye during spawning season each spring, the most damaging time to do any fishing or even to disturb the spawning fish, as far as its effect on the future population of the lake is concerned. The Dept. of Natural Resources (DNR), the Governor of Minnesota and the local press point to zebra mussels, global warming, predatory birds and the greedy anglers among other things as the cause of the disappearance of the Walleye, but they refuse to consider netting, let alone netting during the spawning season as a cause. The 2013 hatch of young Walleye is the only one that is numerous in the lake according to the DNR. That is the year

(continued on pg. 3)

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PO Box 0379

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that central Minnesota had a late spring with a late ice-out and the result was an abbreviated period of time between ice-out and the start of the angling season during which netting was done. Should that tell us something?

As a result, the Minnesota DNR has closed Mille Lacs Lake, the Walleye capitol of the world, to Walleye fishing. For a community based on tourism with Walleye fishing being the primary tourist attraction, this is devastating to 161 businesses who rely on the area for their livelihood. A few years back, properties on Lake Mille Lac could be purchased only at a premium and often sold privately before even being advertised. There are now over 200 properties for sale around the lake, property values are falling, and the county tax picture is faced with a 31 million dollar decrease in assessed value of property and more cuts on the way. So many businesses are feeling the pinch, some have already closed, and the Governor of Minnesota is talking about low or no interest loans to the businesses and tax abatement, all short term fixes.

While this is going on, the Mille Lac band is buying and building at a furious rate, with casino and other business profits as well as government monies of all sorts.

Mille Lacs County, is not so slowly losing tax base by the Mille Lacs band buying land and putting it in trust, which deprives the County, the cities and the schools of property tax money with which to function. It is currently estimated that in Mille Lacs County there is \$177,000,000 in current property value loss to the county tax base because of fee to trust. And it continues: the Mille Lac band has applied for about 1000 acres of additional trust land on the basis that the former Mille Lac Reservation still exists, some objected to by the county and some actually under appeal by the County. In addition the Mille Lac band has applied to the Justice Dept to be covered under the Tribal Law and Order Act to apply to the entire former Mille Lac Reservation area. Never mind that the former Mille Lac Reservation was sold to the United States in 1863-64 and became public domain.

Are we as individuals, are we as a community, are we as a State, going to stand by and watch a beautiful tourist area become transformed from an

area to be enjoyed and benefited from by all people to one for the benefit of only one race? Are we going to let Chief Art Gahbow's words ring true? Think about it and decide what you can and will do! Or send \$35.00 membership dues to

Mille Lacs Equal Rights Foundation (MERF)
PO Box 62, Wahkon, MN 56386 And get on our mailing list.

And So We Wait!

By Judy Bachman

New York: Federal Indian Policy (FIP) issues crisscross the state of NY. From Buffalo to Oneida County and from the St. Lawrence to Long Island, NY is riddled with FIP intrusion. In this issue focus is placed on Oneida County and the federal court case filed by CERA and The Central NY Fair Business. In 2005 the Sherrill Decision ruled that the proper avenue for the tribe to hold sovereignty over land they purchase was the fee to trust process known as 25 USC 465. The local tribe immediately filed a petition for land to be placed into trust. After a long process of hearings and filings objecting to the granting of land trust to the tribe a decision was made in 2008. The federal government finally issued a Record of Decision (ROD) stating that the tribe would be entitled to 13,000 acres of land (most of it non-contiguous) and that the Feds did not have to consider the municipal or private monetary or environmental problems presented in the objection. Several complaints were filed and CERA's complaint asked for the judge to remand the decision back to the DOI asking for a consideration of the Carciari decision which came down from the Supreme Court of the United States (SCOTUS). That ruling indicated that in order for a tribe to be eligible for the fee to trust acquisition they had to be under federal jurisdiction at the time of passage of the Indian Reorganization Act (IRA) of 1934. Our records indicate that the tribe requesting trust land in Oneida County was not a part of the listing of eligible tribes presented to Congress at the time that act was passed. Thankfully the judge ordered the remand and the federal government did not issue their amended ROD until 2013.

(continued on pg. 4)



Just Waiting and Waiting and Waiting in Plymouth, California By Butch Cranford

We have waited more than 12 years since the Ione Band announced plans to build a large Las Vegas style casino in rural Plymouth, California. We have waited more than 8 years from the 2006 public notice of their FTT application, waited more than 5 years since the 2010 public notice of their FEIS and we have waited more than 3 years since federal GS employee Donald Laverdure, acting as the assistant Secretary of Indian Affairs(ASIA), approved the fee to trust application for the Ione Band in May 2012. Years of waiting and being ignored by the Department of Interior (DOI), the Bureau of Indian Affairs, the National Indian Gaming Commission, and the Office of Indian Gaming and now we wait on the Federal District Court in Sacramento. Citizen group No Casino in Plymouth (NCIP) and Amador County filed APA challenges in Federal District Court in June 2012 to the Record of Decision issued by ASIA Laverdure in May 2012 and both have now languished more than 3 years in federal district court.

In February 2014 NCIP filed a motion for judgement on the pleadings based on a 1992 order and 1996 final decision from the federal District Court in Sacramento. In 1992 that court granted the DOI's motion for summary judgement based on the DOI's well documented evidence that the Ione Band had never been recognized by any means available to Indians—(an act of Congress, treaty, or Section 83 petition) The case became final in 1996 with no appeal of the decision by either the DOI or the Ione Band. NCIP's motion for judgement on the pleadings was challenged on procedural grounds by the Department who argued that a motion for summary judgement was procedurally proper. The Court granted their motion for dismissal and ordered NCIP to file a motion for summary judgement. The dismissal was on purely procedural grounds as the Judge noted in the order that the Department had failed to address the merits of NCIP's motion for

judgement on the pleadings.

NCIP then filed a motion for summary judgement containing the same facts and merits presented in the motion for judgement on the pleadings in October 2014 and briefing was completed in February 2015. All we need now is a decision from the Court based on the Court's 1992 order and 1996 final decision which found that the Ione Band had never been recognized prior to 1992. This Federal District Court order and Decision which was never appealed is binding on the Department and the Ione Band. The Federal District Court record is crystal clear that Ione was not recognized in or at any time prior to 1992 and is not eligible to have land taken into trust pursuant to the 2009 Supreme Court decision in *Carcieri*. So we wait and wait and wait and the only good news is while we wait no casino is being built.

(And So We Wait continued from pg. 3)

In that amended ROD the feds indicated that they DO NOT AGREE WITH THE RULING OF SCOTUS and that the tribe can actually have the government take 13,000 acres of land into trust, based however on the 2008 ROD not the amended ROD of 2013. In 2015 Judge Kahn issued dismissals of the three remaining complaints. CERA's legal advisor recognized a statute that Judge Kahn had used in his order and CERA/CNYFBA immediately filed a motion for reconsideration. In thirty six hours (yes hours not days or weeks) the judge issued an order for the federal government to answer our motion. The answer filed by the feds implies that they are the federal government and they cannot be questioned. They also indicate that if the judge really wants to rule on the issues we presented in our motion for reconsideration he should order the case re-briefed. It has now been three months since the feds answer and we wait. The best part of this situation is that the issues of Civil and Constitutional Rights have been preserved at the entry level of federal court. No matter what Judge Kahn rules the issues will go forward. If he denies our motion we file an appeal to the second circuit. If he rules in our favor the feds will file. If he rules it to be re-briefed we are ready. But for now we wait.

SENATOR BARRASSO INTRODUCES “INTERIOR IMPROVEMENT ACT”

Senator Barrasso, Chairman of the Senate Committee on Indian Affairs introduced the “Interior Improvement Act.” This bill addresses the land-in-trust issued faced by Tribes following the Supreme Court’s decision in *Carciere v. Salazar* in 2009. Since that time, tribes have been calling on Congress to amend the Indian Reorganization Act to: 1) reaffirm the Secretary of the Interior’s authority to take lands into trust for all tribes; and 2) reaffirm the status of current lands held in trust for tribes. (NCAI Resolutions #MSP-15-044; #RAP-10-024; RAP-10-058C)

The “Interior Improvement Act” accomplishes those two goals and also codifies parts of the existing regulations for land-in-trust; encourages cooperative agreements between tribes and states by incentivizing cooperative agreements, but does not penalize tribes if cooperative agreements cannot be reached; requires publication of land-in-trust applications on the Department of Interior website for increased transparency; and requires notice within 30 days of receipt of application to local governments as well as tribes.

This legislation complements S. 732, the *Carciere*-fix legislation introduced by Senator Tester in March of this year. Both pieces of legislation seek to bring certainty into the land-in-trust process and address the myriad of legal and administrative issues that were brought about by the *Carciere* decision in 2009.

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Important! Please Read!

Please make your check out to CERA (no tax deduction), OR to CERF (if you would like a tax deduction), OR if you would like us to decide where your donation could best be used, you can make it out to CERAorCERF. To avoid confusion, we kindly ask that you do not make your check out to CERA/ CERF or to CERA-CERF. Please help us make our bank, the Internal Revenue Service and our treasurer happy!

Interior Improvement Act

The *Interior Improvement Act* is designed to address longstanding problems associated with the U.S. Supreme Court’s decision in *Carciere v. Salazar*, 555 U.S. 379 (2009), and the Department of the Interior’s Part 151 land acquisition process. This bill will dramatically improve the land acquisition process for Indian tribes.

This bill solves problems flowing from the Court’s decision by:

- Restoring** the Secretary of the Interior’s authority to take land into trust for **all federally recognized tribes**.
- Reaffirming** the status of Indian trust lands already taken into trust.

This bill improves existing Part 151 regulations by:

- Requiring **consultation** with Indian tribes.
- Recommending the use of **cooperative agreements and reciprocal notice and comment** procedures.
- Offering a **fast-track application process** for tribes with cooperative agreements.
- Providing a **good faith protection** for tribes without cooperative agreements.
- Allowing stakeholders to **voice and address concerns without first resorting to the courts**.
- Codifying Part 151 regulations and guidance** into statute, such as:

o Meaning of the words “contiguous” (*see* 25 CFR § 151).

o Application components (*see* 25 CFR §§ 151.09-.11).

o Notice and comment associated with applications and Notice of Decision (*see* 25 CFR § 151.11 (d) and 25 CFR § 151.12).

o Review of final agency actions (*see* 25 CFR § 151.12).

o Exhausting administrative remedies (*see* 25 CFR § 151.12).

o Encouraging mitigation and use of cooperative agreements (*see* Fee to Trust Handbook, pp. 23).

In addition, this bill supports:

- **Economic development and self-determination** by allowing tribes to use their land for the betterment of their people.
- **Cost savings** for tribes and taxpayers by streamlining Department processes, cutting red tape, and reducing uncertainty and litigation.
- **Transparency** by creating statutory notice and comment requirements.

CERA SPEAKS OUT IN LETTER TO SENATOR BARRASSO

To Senator Barrasso: as U.S. Citizens who have been seriously impacted by the Department of Interior’s questionable misadministration of the fee to trust process we find your proposed legislation to “Improve Interior” surprising and disturbing.

How this bill would improve the Department of Interior’s administration of the fee to trust process is unclear. As written, your proposed bill provides Congressional cover and approval for the Department’s decades long misguided and wrong interpretation of Section 19 of the IRA while facilitating a continuance of the Department’s questionable administration of fee to trust for tribes not recognized or under federal jurisdiction in 1934 despite the Supreme Court’s 2009 Carcieri decision.

This proposed bill is a serious concern to those now in Federal Court challenging the Department’s unlawful administration of fee to trust. Challenges seeking judicial review based on the Supreme Court’s plain reading of Section 19 in Carcieri would simply vanish if this bill becomes law. Challenges costing tens of thousands of dollars that have taken years to get to Federal Court just wiped away with no judicial review as a result of your proposed Interior Improvement Act.

The language proposed is “ex post facto” in nature as it changes the law as written and intended by the Congress in 1934 and would certainly be injurious to citizens who have relied on the plain language of Section 19 as determined by the Supreme Court in Carcieri to challenge post Carcieri fee to

trust decisions by the Department to take land into trust for tribes that were neither recognized or under federal jurisdiction in 1934.

With the Supreme Court’s clearly stated dismissal of any Chevron deference to the Department and the Secretary in the Carcieri decision, no authority as proposed in this legislation should be afforded to the Department in its administration of fee to trust. Since 2009 the Department has ignored the Carcieri decision and “fixing” it administratively as committed to the tribes by Department officials during a series of regional forums the Department held exclusively with tribal members post Carcieri in Sacramento, Ca., Minneapolis, Mn, and Washington D.C..

Does the Congress pursuant to the U. S. Constitution have authority to take privately owned State lands into trust for Indians, Indian tribes, or any other entity? If such authority for the Congress is present in the U. S. Constitution please provide Article and Section from the Supreme Law of the United States providing such authority to the Congress in any response from you or your office.

Based on experience with the Department’s administration of fee to trust it is difficult to see how this proposed legislation will improve Interior. It will, instead, expand the Department’s ability to misconstrue the IRA, to unlawfully administer fee to trust, and will facilitate the cover up of the malfeasance and corruption past and present in the Department’s administration of fee to trust. Consequently, it will exempt that malfeasance and corruption from judicial review in current Federal Court cases with your proposed change of the Section 19 language.

Before attempting to provide much needed improvement to Interior you should inquire as to how Interior could approve in accordance with current law and regulations a gaming related fee to trust application for the Ione Band in 2012 when the Ione Band was neither recognized or under federal jurisdiction in 1934 as documented by the Department of Interior in Federal District Court in 1992.

A group recognized for the first time via a 1994 Department memo. A challenge to this unlawful decision is currently in the Federal District Court in Sacramento.

This legislation is simply not needed and will not improve Interior. What is needed is an immediate Congressional investigation into the Department's flawed, corrupt, and unlawful administration of fee to trust. This investigation should include a thorough review of all Inspector General and Government Accounting Office investigations and reports related to fee to trust. Further, panels of citizens such as CERA members should be included on any panels testifying before the investigating committee about how the Department actually administers the fee to trust process.

Lastly, this proposed legislation should be withdrawn until such time as the above recommended investigation is initiated and completed. It is our belief that after hearing from the public in the investigation the proposed legislation will not be needed. What will be needed is serious reform of the archaic, corrupt, and mismanaged agencies of the Department of Interior that have anything to do with fee to trust to include the Bureau of Indian Affairs, the Office of Indian Gaming, the Environmental Protection Agency, and National Indian Gaming Commission.

Your Prompt Attention & Response Are Respectfully Requested,

Judith S. Bachmann, C.E.R.A. Chair

D.W. "Butch" Cranford, C.E.R.A. Vice Chair

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P.O. Box 0379

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Thank you for your continued support!

An Assault on the Tax Base of America?

In March 2015, Senator Jon Tester of Montana re-introduced Senate Bill 732, "a bill to amend the Act [Indian Reorganization Act] of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes." There are seven cosponsors of this bill, one each from Kansas, Minnesota, North Dakota, Washington, Michigan and two from New Mexico. You can get their names by a computer search for "Cosponsors of Senate Bill 732."

In July 2015, Congressman Tom Cole of Oklahoma introduced a bill (H.R. 3137) "to reaffirm the trust status of land taken into trust by the United States pursuant to the Act of June 18, 1934, for the benefit of an Indian tribe that was federally recognized on the date that the land was taken into trust, and for other purposes."

There are 31 cosponsors of this bill, nine from California, two each from Arizona, Florida, Minnesota, New Mexico, and Washington and one each from Indiana, Alabama, Colorado, Hawaii, Idaho, Michigan, New Hampshire, New Jersey, North Carolina, Oklahoma, Texas and Wisconsin. Here again their names are available by computer search.

Might it be helpful, for the future of the United States for these Congressmen and Congresswomen to study the history of this great country rather than relying on lobbyists for their knowledge? Maybe take time to read the congressional record leading up to the Indian Reorganization Act? And maybe even read the Constitution of the United States and even maybe the Federalist papers? And then think about what legislation like this would do. Yes, it would help one group of people become more wealthy and powerful, but at the expense of the counties, cities and schools who rely on property tax money to provide the daily needs of regular citizens, including our school children who are the future of this great nation.

If you as readers are concerned about the effects of this type of legislation on the future of our people, call these sponsors and cosponsors and make them aware of how wrong these efforts are.

Federal Indian policy in unaccountable, destructive, racist and unconstitutional. It is therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States

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A switchboard operator will connect you directly with the Senate office you request.

The U.S. Senate: [Http://www.senate.gov/](http://www.senate.gov/)

CALL YOUR CONGRESSMAN - House switch board (202)225-3121
A switchboard operator will connect you directly with the House office you request.

The U.S. House of Representatives: www.house.gov

CALL THE SPONSORS OF HOUSE BILL H.R. 3137

U.S. Reps.. Betty McCollum, D-MN, and Tom Cole, R-OK, said this bill would resolve uncertainty around tribal land-into-trust actions that were created by the U.S. Supreme Court's controversial *Carcieri v. Salazar* decision. McCollum and Cole, who serve as the co-chairs of the Native American Congressional Caucus, introduced H.R. 3137 to reaffirm the trust status of lands for tribes that were federally recognized when a trust action was taken - *not just those recognized before the Indian Reorganization Act.*

CALL THE SPONSOR OF SENATE BILL 1878

Senator John Barrasso, Wyoming

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