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MEMORANDUM

TO: National Congress of American Indians

FROM: Richard Guest, Staff Attorney, Native American Rights Fund

RE: February 2015 Update of Litigation in the Wake of the U.S. Supreme Court's Decision in *Carcieri v. Salazar*

U.S. Supreme Court:

***Match-E-Be-Nash-She-Wish Band of Potawatomi Indians v. Patchak* (Nos. 11-246 and 11-247)** – On June 18, 2012, the Supreme Court announced its decision and held: (1) Mr. Patchak's *Carcieri* challenge to the status of tribal trust lands was brought pursuant to the Administrative Procedures Act (APA), and is therefore not barred by the Indian lands exception to the waiver of immunity under the Quite Title Act (QTA); and (2) Mr. Patchak, an individual non-Indian landowner, is within the "zone of interests" protected by the Indian Reorganization Act and thus has prudential standing to bring a *Carcieri* challenge to a land-in-trust acquisition. In an opinion authored by Justice Kagan, the Court (8-1) found that the APA generally waives the immunity of the United States from any suit "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under the color of legal authority." 5 U.S.C. § 702. According to the Court, Patchak's *Carcieri* claim fits within this waiver of immunity.

On remand to the U.S. District Court for the District of Colombia, after two years of inaction by Mr. Patchak, the court issued a scheduling order on September 23, 2014. On October 9, 2014, the Gun Lake Tribe filed a Notice of Supplemental Authority citing the Gun Lake Trust Land Reaffirmation Act, PL 113-179, 128 Stat 1913, enacted by Congress and signed into law by the President on Sept. 26, 2014. Motions for summary judgment were filed by the parties on October 31, 2014, with responses in opposition to the motions filed on December 4, 2014 and reply briefs filed on December 18, 2014. The matter is now fully briefed, but the court has not yet indicated whether it will hear arguments on the motions.

U.S. Courts of Appeals

***Confederated Tribes of Grand Ronde, Clark County, et al., v. Jewell* (D.C. Cir. No. 14-5326):** On December 18, 2014, the Confederated Tribes of the Grand Ronde filed a Notice of Appeal to the U.S. Circuit Court of Appeals for the D.C. Circuit seeking review of the December 12, 2014 decision of the U.S. District Court for the District of Colombia which found that the terms "federally recognized" and "under federal jurisdiction" in the Indian Reorganization Act are both ambiguous. The court held that the Secretary of Interior's two-part test to determine that the Cowlitz Tribe was "under federal jurisdiction" in 1934 is entitled to Chevron deference, and her Record of Decision (ROD) to take the land in to trust for the Cowlitz Tribe did not violate the Administrative Procedures Act.

Background: On January 31, 2011, Clark County, City of Vancouver, Citizens Against Reservation Shopping, various non-Indian gaming enterprises and a number of individual landowners filed suit in the against the Department of the Interior and the National Indian Gaming Commission challenging the initial ROD issued by the Department of the Interior to acquire land in trust for the benefit of the Cowlitz Indian Tribe. On February 1, 2011, the Confederated Tribes of the Grande Ronde Community of Oregon filed a separate suit against the Department of the Interior also challenging the ROD. In general, their complaints alleged that the Cowlitz Tribe was neither federally recognized nor under federal jurisdiction in June 1934. Therefore, under the Supreme Court's holding in *Carcieri,* the Secretary does not have authority to take lands in trust for the Tribe and does not have the authority to proclaim such land as the Tribe's reservation.

After a series of maneuvers by the parties, on March 13, 2013, the district court issued an order dismissing the cases, and remanded the action to the Department with instructions to rescind the 2010 ROD, and issue a new ROD within sixty (60) days. On May 8, 2013, the Department published notice in the Federal Register of the April 22, 2013 decision of the Assistant Secretary—Indian Affairs to rescind the 2010 ROD and to issue a new ROD announcing the decision "to acquire in trust approximately 151.87 acres of land in trust for the Cowlitz Indian Tribe and issue a reservation proclamation under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465 and 467. We have determined that the Cowlitz Indian Tribe's request meets the requirements of the Indian Gaming Regulatory Act's ''initial reservation'' exception, 25 U.S.C. 2719(b)(1)(B)(ii), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988. The land is located in Clark County, Washington, and will be used for gaming and other purposes."

On June 6, 2013, the Confederated Tribes of Grand Ronde and Clark County both filed new complaints against the Department of the Interior which were consolidated and assigned to Judge Rothstein. The complaints include allegations that the Department's May 2013 ROD decision is arbitrary and capricious based on *Carcier*i, among other things. On August 13, 2013, the court granted the Cowlitz Tribe's motion to intervene.

***Big Lagoon Rancheria v. State of California* (9th Cir. No. 10-17803) –** On September 17, 2014, an en banc panel of the U.S. Court of Appeals for the Ninth Circuit (Chief Judge Kozinski, along with Judges Pregerson, Reinhardt, O'Scannlain, Graber, Fletcher, Paez, Bybee, Smith, Christen, and Nguyen) heard oral arguments. This lawsuit was initiated by Big Lagoon Rancheria alleging that California had acted in "bad faith" in refusing to negotiate a gaming compact under the Indian Gaming Regulatory Act (IGRA).

Background: At the district court level, the State had attempted to demonstrate good faith by arguing *Carcieri*—the state's need to preserve the public interest by keeping a gaming facility from being located on lands unlawfully acquired by the Secretary of the Interior for a tribe that was not "under Federal jurisdiction" in 1934. The district court characterized the argument as a *post hoc* rationalization by the State of its actions which were concluded four months prior to the Court's decision in *Carcieri*.

However, on appeal a two-judge majority in the 9th Circuit held that a tribe must have jurisdiction over "Indian lands" in order to file suit to compel negotiations under IGRA. Specifically, the tribe must have jurisdiction over the Indian lands upon which the gaming activity is to be conducted. In its view—based on an incomplete factual and historical record developed through briefing on cross-motions for summary judgment—the majority found that the eleven-acre parcel taken into trust by the United States in 1994 were not "Indian lands" since Big Lagoon was not a tribe "under Federal jurisdiction" in 1934. Therefore, the State is under no obligation to negotiate in good faith with Big Lagoon. The dissent argued that the eleven-acre parcel are Indian lands under IGRA based on precedent within the Ninth Circuit, and that the State could not collaterally attack the status as trust lands years after its administrative and legal remedies had expired. The Tribe filed a petition for rehearing/rehearing en banc which was granted on June 11, 2014. A decision by the en banc panel is pending.

***State of Alabama v. Poarch Band of Creek Indians* (11th Cir. No. 14-12004):** On January 13, 2015, the U.S. Court of Appeals for the Eleventh Circuit heard oral arguments in this case, and the Tribe was joined by the United States during argument. In short, the State of Alabama is asking the federal courts to declare tribal gaming a "public nuisance" and to permanently enjoin the tribe from operating its gaming operations. Within their complaint, based on the Supreme Court's decision in *Carcieri*, the State alleges that the Secretary of the Interior was without authority to take the lands in trust since the Poarch Band was neither recognized or under federal jurisdiction in 1934. Thus, according to the State, the tribe's casinos are not properly located on "Indian lands" as required under IGRA. In its Memorandum Opinion and Order, the district court rejected all of the State's arguments, and soundly rejected the Ninth Circuit's reasoning in the *Big Lagoon* case. The district court granted the Tribe's motion to dismiss based on the doctrine of tribal sovereign immunity. At the Eleventh Circuit, the United States and the United South and Eastern Tribes both filed amicus briefs in support of the Poarch Band. The State of Michigan, joined by Arizona, Kansas, South Dakota and Utah, filed an amicus brief in support of Alabama. The Alabama Citizens Action Program (ALCAP), an inter-denominational ministry self-described as "Alabama's Moral Compass," also filed an amicus brief in support of Alabama.

U.S. District Courts:

***Butte County v. Hogen*, (DC-DC No. 1:08-cv 00519):** On January 24, 2014, Kevin Washburn, Assistant-Secretary–Indian Affairs, issued the Record of Decision (ROD) in relation to the application submitted by the Mechoopda Tribe of Chico Rancheria to acquire 626.55 acres of land located in Butte County California in trust under Section 5 of the Indian Reorganization Act (IRA). *See* 79 Fed. Reg. 6917. On July 13, 2010, the U.S. Court of Appeals for the D.C. Circuit had issued its opinion setting aside the Secretary's initial decision to take the land in trust and remanded the case to the Department of the Interior to address the "new" information provided by Butte County in relation to the Department's restored tribe/restored lands determination under the Indian Gaming Regulatory Act (IGRA).

In addition to its determination that the Tribe qualifies as a "restored tribe" and that the trust lands qualify as "restored lands" under IGRA, the Department applied its two-part inquiry developed after *Carcieri* to determine that the Mechoopda Tribe was "under Federal jurisdiction" in 1934. *See* ROD at 28-37. On February 28, 2014, the United States filed a notice of its compliance with the remand order in the U.S. District Court for the District of Colombia. On November 20, 2014, Butte County filed a motion to remand the January 24, 2014 ROD to the Department for reconsideration, and on January 16, 2015, the United States and the Mechoopda Tribe filed their responses in opposition to the motion. A motions hearing is scheduled for April 7, 2015.

***Stand-Up for California v. Department of the Interior* (DC-DC No. 1:12-cv-2039):** In this consolidated action, the plaintiffs are challenging the decision of the Secretary of the Interior to acquire a 305-acre parcel of land in Madera County, California in trust on behalf of the North Fork Rancheria of Mono Indians. On January 29, 2013, the district court issued an order denying the plaintiff's motion for preliminary injunction. In its analysis of whether to issue a preliminary injunction, the court concluded that the plaintiffs are not likely to succeed on the merits of their *Carcieri* claims based, in part, on the fact that "a majority of the adult Indians residing at the [North Fork] Tribe's Reservation voted to reject the IRA at a special election duly held by the Secretary on June 10, 1935," as well as the original purchase of Rancheria lands by the United States for the Tribe in 1916. On October 23, 2014, the court issued a scheduling order, which has been amended: plaintiffs' motions for summary judgment were filed on January 9, 2015; defendants' responses in opposition and cross-motions for summary judgment are due on February 13, 2015; plaintiffs' reply and/or response to cross-motions are due on March 16, 2015; and any reply by defendants is due on April 15, 2015.

***Jamul Action Committee v. Stevens* (ED-CA No. 2:13-cv-1920):** On September 15, 2013, the Jamul Action Committee (JAC), a non-profit organization of citizens living in and around the rural unincorporated town of Jamul, California, filed a complaint against the National Indian Gaming Commission (NIGC) and the Department of the Interior (DOI) challenging the Indian lands determination issued by the NIGC on April 10, 2013, on behalf of the Jamul Indian Village. In their complaint, the plaintiffs allege that, under *Carcieri*, the Secretary of the Interior

is without authority to take land in trust for the Jamul Indian Village which was neither recognized nor under federal jurisdiction in 1934. On February 27, 2014, the JAC filed its First Amended Complaint which was dismissed on August 5, 2014 with leave to amend. On August 26, 2014, the JAC filed its Second Amended Complaint. The U.S. requested and was granted an extension to file its Response to the Second Amended Complaint to January 22, 2015. However, on January 2, 2015, the JAC filed a motion for preliminary injunction and writ of mandate requesting the court's assistance in requiring the BIA and the NIGC to fully comply with NEPA before proceeding with construction of the Jamul casino. The JAC are also requesting a preliminary injunction enjoining the Defendants from constructing, or continuing to construct, the Jamul Indian Village/Penn-National casino until the NEPA process is complete. The responses in opposition were filed on January 16, 2014, and on January 27, 2015, the court issued a minute order submitting the matter without oral argument.

***Cherokee Nation v. Jewell* (ND-OK No. 4:12-cv-493)**: On August 12, 2013, U.S. District Court for the Northern District of Oklahoma granted the Cherokee Nation's motion for a preliminary injunction to prevent the Department of the Interior from taking 2.03 acres of land in trust for the United Keetoowah Band of Cherokee Indians of Oklahoma (UKB). The Cherokee Nation had filed suit challenging the Department of the Interior's July 30, 2012 decision to acquire the parcel in trust, asserting that because "UKB was not federally recognized until 1946, the Secretary cannot . . . accept the [land] into trust under *Carcieri*." The UKB intervened and sought a stay of the order which was denied by the district court. The Department of the Interior and the UKB sought a stay of the order granting the preliminary injunction from the U.S. Court of Appeals for the Tenth Circuit which was denied on August 26, 2013. On December 11, 2013, the parties filed a joint motion to expedite briefing which was granted. The Cherokee Nation filed its opening brief on December 11, 2013, and the United States filed its response brief on January 3, 2014, and Cherokee Nation filed its reply brief due on January 17, 2014. A hearing on the merits was held before Judge Frizzell on July 25, 2014, and a transcript is available on PACER. On September 8, 2014, the parties submitted their Proposed Findings of Facts and Conclusions of Law. As of February 6, 2015, no further filings are reported on the docket.

***County of Amador v. Salazar* (ED-CA No. 2:12-cv-01710) and *No Casino in Plymouth and Citizens Equal Rights Alliance v. Salazar* (ED-CA No. 2:12-cv-1748):** On June 27, 2012, the County of Amador filed a suit for declaratory and injunctive relief in the U.S. District Court for the Eastern District of California against the Department of the Interior challenging the May 24, 2012 Record of Decision (ROD) taking 228 acres of land in to trust for the benefit of the Ione Band of Miwok Indians. On June 29, 2012, No Casino in Plymouth and Citizens Equal Rights Alliance filed a suit against the Department also challenging the ROD. On July 24, 2012, a case related order was issued and both actions were assigned to a Judge Mendez, and then reassigned to Judge Nunley. Among their many claims, the plaintiffs contend that the Secretary is without authority under *Carcieri* to take land in trust for the Ione Band of Miwok Indians since the tribe did not exist as a "recognized Indian tribe" in 1934 and were not "under federal jurisdiction" in 1934. On September 12, 2013, the U.S. District Court for the Eastern District of California granted the Ione Band of Miwok Indians' motion to intervene, and the tribe filed its answer on November 27, 2013. On January 24, 2014, the court issued its Pretrial Scheduling Order, and the Plaintiffs filed their Motion for Summary Judgment on May 1, 2014. On July 10, 2014, the U.S.

and the Tribe filed their Opposition and Cross-Motions for Summary Judgment. On September 4, 2014, the Plaintiffs filed their Reply in Support of their Motion for Summary Judgment and Response to the U.S. and Tribe's Cross-Motions for Summary Judgment. On October 16, 2014, the United States and the Tribe each filed their Reply Briefs. The matter appears to be fully briefed, but the court has not yet set a date for the motions hearing.

***State of New York, et al. v. Salazar, et al.*, (ND-NY No. 6:08-cv-644); *City of Oneida v. Salazar, et al.*, (No. 5:08-cv-648); *Upstate Citizens for Equality, Inc., et al. v. United States of America, et al.*, (No. 5:08-cv-633); *Town of Verona, et al. v. Salazar, et al.*, (No. 6:08-cv-647); *and Central New York Fair Business Association, et al., v. Salazar, et al., No.* (ND-NY No. 6:08-cv-660):** On May 16, 2013, Governor Cuomo announced that the State of New York and the Oneida Nation had reached a broad settlement agreement that would resolve the litigation, along with a number of other matters. On December 12, 2013, counsel for the Oneida Nation filed a joint letter motion informing the court that the parties had reached settlement and that all the parties (including the United States) had executed a Rule 41 stipulation of dismissal. Both the Cayuga Indian Nation and the Stockbridge Munsee Band filed motions to intervene to object to the settlement. On March 4, 2014, the U.S. District Court for the Northern District of New York issued an order dismissing the various motions to intervene and approving the Settlement Agreement which resolves both the trust litigation in the lower court and the tax foreclosure litigation pending before the U.S. Supreme Court. On March 26, 2014, the U.S. Supreme Court dismissed the petition pursuant to Rule 46 and these matters are now closed.

Background**:** On September 24, 2012, the U.S. District Court for the Northern District of New York issued a remand order in these five related cases which challenge May 2008 Record of Decision (2008 ROD) of the Department of the Interior to take approximately 13,000 acres of land in trust for the Oneida Indian Nation. The court remanded the 2008 ROD to the Department of Interior to further develop the record on whether the Department of Interior has statutory authority to take this land into trust pursuant to the Indian Reorganization Act (IRA).

State Courts:

***Rape v. Poarch Band of Creek Indians* (Supreme Court of Alabama No. 1111250):** On April 17, 2013, the Poarch Band of Creek Indians filed their response brief in a case pending before the Alabama Supreme Court on the question of tribal sovereign immunity from suit in an action brought by Mr. Rape over the malfunction of a slot machine at the tribe's casino. The Alabama Attorney General had filed an amicus brief in support of Mr. Rape making collateral arguments challenging sovereign immunity on the basis that the Poarch Band lacks proper federal recognition since only Congress has this authority, not federal agencies and that, under *Carcieri*, the federal government lacked authority to take lands in trust for the tribe. The National Congress of American Indians (NCAI) and the United South and Eastern Tribes (USET) filed an amicus brief in support of the Poarch Band. At present, all briefs and supplemental authorities have been submitted to the Alabama Supreme Court.

***Harrison v. Poarch Band of Creek Indians* (Supreme Court of Alabama No. 1130168):** On May 13, 2014, the Poarch Band of Creek Indians filed their response brief to another petition

pending before the Alabama Supreme Court on the question tribal sovereign immunity. In this action, the plaintiff is seeking money damages against the Tribe under the Alabama Dram Shop Act. The *Carcieri* claims are identical to the claims brought by Mr. Rape in his action with the addition of arguments relying on the Ninth Circuit's decision in *Big Lagoon* (which has been vacated by the Ninth Circuit). NCAI and USET filed a joint amicus brief in support of the Poarch Band.

Kelly v. Poarch Band of Creek Indians **(Supreme Court of Alabama No. 1121411):** On May 23, 2014, the Alabama Supreme Court denied the petition for writ of mandamus filed by the Poarch Band of Creek Indians following the trial court's denial of the Tribe's motion to dismiss based on tribal sovereign immunity. The *Carcieri* arguments are nearly identical to the claims brought in the *Rape* and *Harrison* cases. The trial court found that the Tribe's agreement to maintain dram-shop insurance as a condition of receiving a liquor license for their casino constituted an express waiver of any immunity from suit based on a violation of Alabama's Dram Shop Act. In an unusual development, Chief Justice Moore of the Supreme Court of Alabama wrote an 18-page special concurring opinion to the denial of the petition. He stated that the Tribe and its casino "do not have a clear legal right to sovereign immunity in an Alabama state court from a dram-shop action," and he chose to "write separately to examine the law on this question of first impression."

Interior Board of Indian Appeals:

State of New York, Franklin County, New York, and Town of Fort Covington, New York v. Acting Eastern Regional Director **(IBIA Nos. 12-006, 12-010)**: The State of New York and County and Town of Fort Covington filed an administrative appeal of the Notice of Decision issued by the Acting Eastern Regional Director for the Bureau of Indian Affairs to take 39 acres of land into trust for the benefit of the St. Regis Mohawk Tribe of New York. The 39-acre parcel is currently being used for a solid waste transfer station, and the application states that the property would continue to be used for this purpose. Although the St. Regis Mohawk Tribe is on the 1947 Haas list as a Tribe that voted to "opt out" of the provisions of the IRA, the Appellants argue that the Tribe was under State rather than Federal jurisdiction in 1934 and that the Supreme Court's decision in *Carcieri* therefore deprives the Secretary of authority to take land into trust for the Tribe under the authority of the IRA. On June 11, 2014, the IBIA issued its Order affirming the Notice of Decision, concluding that the Tribe was under Federal jurisdiction in 1934 based on the Secretary calling for an election of the Tribe's members to vote on whether to opt out of the IRA, stating: "How the Tribe voted is irrelevant, because Congress, through the Indian Land Consolidation Act of 1983 (ILCA), 25 U.S.C. 2201 *et seq.*, extended Section 5 of the IRA to those tribes that originally voted to opt out of the IRA.

Village of Hobart v. Bureau of Indian Affairs **(IBIA Nos. 10-091, 10-092, 10-107, 10-131, 11-002, 11058, 11-083):** On May 9, 2013, the Interior Board of Indian Appeals issued its order in the consolidated administrative appeal of the Village of Hobart, Wisconsin to the Notice of Decision issued by the Regional Office of the Bureau of Indian Affairs of its intent to take several parcels of land into trust for the benefit of the Oneida Tribe of Indians of Wisconsin (57 IBIA 4). In spite of the fact that the Oneida Tribe is on the 1947 Haas list, the Village of Hobart

argued that the Tribe was not "under federal jurisdiction" because their reservation was disestablished. In rejecting this argument, the IBIA determined the Oneida Tribe was under federal jurisdiction in 1934 based upon the fact the Tribe voted on application of IRA to the Tribe in 1934 and appears on the Haas List, the fact the United States held parcels of land in trust for the Tribe and tribal members in 1934, and the overall history of relations between the Tribe and the federal government. The IBIA remanded with instructions for the Regional Director to specifically address the village's claims regarding jurisdictional disputes, loss of tax revenues, and other concerns.

***Thurston County v. Great Plains Regional Director* (IBIA Nos. 11-031, 11-084, 11-085, 11-086, 11-087, 11-095, 11-096):** Thurston County, Nebraska, had filed an administrative appeal of the Notice of Decision filed by the Regional Director of the Bureau of Indian Affairs of its intent to take several parcels of land in trust for the benefit of the Winnebago Tribe of Nebraska. In spite of the fact that the Winnebago Tribe is on the 1947 Haas List and the fact that the Tribe has been located at all times since 1865 on reservation lands purchased by the United States, Thurston County argues that the Tribe was not "under federal jurisdiction" in 1934. On December 18, 2012, the IBIA issued its decision declining to consider the county's *Carcieri*-based arguments for failure to timely raise them before the Regional Director and raising them for the first time on appeal (56 IBIA 62). However, the IBIA vacated and remanded the decision to take certain parcels of land in trust on other grounds.

***Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director* (IBIA No. 05-050); *No More Slots, Santa Ynez Valley Concerned Citizens, Preservation of Los Olivos and Preservaton of Santa Ynez v. Pacific Regional Director* (IBIA No. 12-140; 12-141; 12-148):** Background: On July 9, 2008, the U.S. District Court for the Central District of California remanded this case to the Interior Board of Indian Appeals (CA-CD No. 06-1502). The case involved a challenge brought by two citizen groups from the Santa Ynez Valley to the IBIA's decision that the groups lacked standing to challenge the Department's decision in 2005 to take land in trust for the benefit of the Santa Ynez Band of Chumash Mission Indians (IBIA No. 05-050-1). In short, the district court vacated the IBIA order and remanded the case to the IBIA, requiring the IBIA to specifically "articulate its reasons (functional, statutory, or otherwise) for its determination of standing, taking into account the distinction between administrative and judicial standing and the regulations governing administrative appeals."

On February 8, 2010, the citizen groups filed their opening brief before the IBIA, not only addressing standing, but arguing that the Secretary does not have authority to take land in trust for the Tribe. The groups argued that the Supreme Court's decision in *Carcieri* "dramatically changed the legal landscape with respect to the power and the authority of the Secretary of the Interior and the BIA to take land into federal trust for Indian tribes." The groups provided exhibits—including a 1937 list which references "Santa Ynez" as having a reservation/Rancheria, but does not reference a particular "tribe"—all of which they allege lead "to the conclusion that the Santa Ynez Band was not a tribe under federal jurisdiction in 1934." On May 17, 2010, at the request of the Regional Director, the IBIA partially vacated its 2005 decision and remanded a single issue—whether BIA has authority to accept land in trust for the tribe under *Carcieri*.

On May 23, 2012, the Associate Solicitor for the Division of Indian Affairs signed an opinion confirming that neither *Carcieri* nor *Office of Hawaiian Affairs* limits the Secretary's authority to acquire land in trust for Santa Ynez. Under Federal jurisdiction was demonstrated by establishment of the Reservation in 1906, IRA vote in 1934, and BIA Census in 1934. On June 13, 2012, the Regional Director affirmed the original 2005 trust acquisition decision on the basis that *Carcieri* did not limit the Secretary's authority to acquire land in trust. Several parties filed Notices of Appeal with the IBIA challenging the Regional Director's Notice of Decision to take land in trust. On March 18, 2013, the IBIA issued its order holding: "None of the Appellants filed an appeal with the Board within the 30-day deadline, which is jurisdictional, and therefore we dismiss the appeals." 56 IBIA 233. On June 3, 2014, the IBIA issued its Order on Remand and Order Dismissing Appeal and Addressing the Merits in the Alternative, finding that on remand from the original appeal, the appellants have failed to demonstrate that they have standing to challenge the fee to trust acquisition and did not demonstrate that the Notice of Decision "is arbitrary and capricious or that the Regional Director committed legal error or failed to support the Decision with sufficient evidence."

***California Coastal Commission and Governor Arnold Schwarzenegger v. Pacific Regional Director, Bureau of Indian Affairs* (IBIA Nos. 10-023, 10-024):** The Coastal Commission and Governor ("Appellants") filed an appeal to the October 2, 2009 decision of the Pacific Regional Director to take a 5-acre parcel in Humboldt County in trust for the Big Lagoon Rancheria. In their appeal, the Appellants refer to the U.S. Supreme Court's decision in *Carcieri* and allege that the Big Lagoon Rancheria was not under federal jurisdiction in 1934 and, therefore, the Secretary lacks authority to take lands in trust for the Tribe.

On January 28, 2010, the Assistant Regional Solicitor filed a Motion for Remand of Decision to BIA Regional Director, based on the January 27, 2010 memorandum of the Assistant Secretary of Indian Affairs. The Assistant Secretary directed the Regional Director to request a remand "from the IBIA for the purpose of applying the holding of *Carcieri v. Salazar* to your decision and to determine whether Big Lagoon was under Federal Jurisdiction in 1934." On February 19, 2010, the IBIA reversed the Regional Director's decision and remanded the whole decision back to the BIA (51 IBIA 141). As of February 2015, we are not aware of any decision from the Regional Director.

***Miami-Dade County v. Acting Eastern Regional Director, Bureau of Indian Affairs* (IBIA No.12-152):** Miami-Dade County appealed a July 27, 2012 decision by the Regional Director to approve the acceptance of 229.3 acres of land in trust for the Miccosukee Indian Tribe of Florida. After the county filed its opening brief, the Regional Director filed a request for a remand to allow him to address compliance with NEPA and the BIA's authority to accept land in trust with the framework set forth in *Carcieri.* On July 10, 2013, the IBIA issued its order vacating the decision and remanding the case to the Regional Director to consider the *Carcieri* issue and other arguments raised by the County (57 IBIA 192). As of February 2015, we are not aware of any decision from the Regional Director.