



United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

January 31, 2013

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C St NW
Washington, DC 20240

Dear Secretary Salazar:

I write to express my concern about changes to the Department of the Interior's policy regarding the acquisition of trust lands under pending litigation. It is my belief that the change in Departmental practice has not been thoroughly vetted, and I ask that you clarify several points of concern and allow stakeholders an opportunity for comment before this policy change is implemented.

The abrupt change in policy has caught many who follow this issue, including many within the Native American community, by surprise. While I recognize that the recent *Patchak* and *Carcieri* decisions complicate the Fee-to-Trust process, it is concerning that the Department would unilaterally modify its longstanding policy without consulting affected tribes and other stakeholders.

Furthermore, the Department's new policy raises a number of critical questions. For instance:

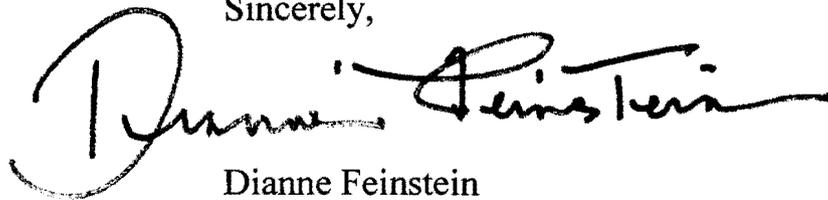
- If a court vacates a trust acquisition after a tribe has made significant investments based on the premise that the land was to be held in trust for perpetuity, is there potential for federal liability?
- Will the Department seek indemnification prior to acquiring trust lands to protect against potential liabilities?

- Does the Department have an established procedure to remove land from trust in a transparent and orderly manner?
- Following the *Patchak* decision, is the change in policy necessary to ensure that tribes do not have to wait for six or more years to utilize new trust lands? Is there an intermediate time frame, such as maintaining the voluntary stay when lawsuits are filed within the initial 30 days, which would represent a compromise legal position? Have you consulted with tribes and other stakeholders to determine if it is feasible to maintain your voluntary stay policy, with additional conditions?

Given the significant unanswered questions and the lack of consultation as recommended by Executive Order 13175 which calls for “meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications,” I urge you to open a formal rulemaking process to resolve these outstanding issues prior to implementing this new policy.

Thank you for your consideration of this request and I look forward to working with you and your successor on this important issue.

Sincerely,

A handwritten signature in black ink, reading "Dianne Feinstein". The signature is written in a cursive style with a large, looping initial "D".

Dianne Feinstein
United States Senator