



Indian Country Relieved As Big Lagoon Ruling Reversed

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Overtuning a decision by one of its own three-judge panels, a federal appeals court ruled earlier this month that a northern California tribe of 24 members can build an Indian casino about 300 miles north of San Francisco.

A larger panel of 11 judges in the 9th U.S. Circuit Court of Appeals reached a unanimous decision on June 4, affirming the right of the Big Lagoon Rancheria to develop an environmentally sensitive tract of 11 acres in Humboldt County, California.

The U.S. Department of the Interior acquired the land for the tribe in 1994, but in January 2014, a panel of three judges on the 9th U.S. Circuit Court of Appeals upheld California's challenge of the purchase.

Citing the controversial *Carcieri* decision by the U.S. Supreme Court in February 2009, California argued the Interior Department should not have taken the land into trust for the Big Lagoon Rancheria because the tribe was not under the federal government's jurisdiction in 1934.

U.S. Circuit Judge Diarmuid F. O'Scannlain, who wrote this month's opinion for the appeals court panel, rejected California's argument, saying it "would constitute just the sort of end run that we have previously refused to allow, and would cast a cloud of doubts over countless acres of land that have been taken into trust for tribes recognized by the federal government."

California also waited too long to challenge the acquisition, exceeding the six years allowed by a federal law known as the Administrative Procedure Act, O'Scannlain noted.

Kevin Washburn, the assistant secretary of Indian affairs at the U.S. Interior Department, has aggressively sought to put land into trust for tribes and praised this month's decision.

"Restoring tribal homelands by taking land into trust is one of the Obama administration's highest priorities," Washburn told GamblingCompliance in an email on Thursday.

"I applaud the 9th Circuit's unanimous decision to clarify that federal decisions to take land into trust for tribes cannot be attacked collaterally long after the statute of limitations has run."

It was a far cry from Washburn's reaction last year to the earlier decision by the three-judge panel when he said the court had gone "off the rails."

Sam Hirsch, who argued the case as the U.S. Justice Department's acting assistant attorney general in charge of environmental litigation, said the ruling is an important victory for tribes.

"The principles at stake in this case matter for scores of tribes and millions of acres of tribal land," Hirsch said. "We had a responsibility to stand up for those American Indians whose interests were endangered."

John Dossett, general counsel for the National Congress of American Indians, said this month's decision is significant not only for the Big Lagoon Rancheria but all Indian tribes who have obtained land that was taken into trust for them by the Interior Department.

"The 9th Circuit made it clear that an adversary can't wait 20 years or 100 years after the land was placed in trust [to challenge the acquisition]," Dossett said.

"This is really important for the finality of decisions on all tribal trust lands."

Eric Eberhard, an Indian law expert at Seattle University School of Law, said this month's ruling corrected last year's decision by the three-judge panel.

"The original three-judge panel in the 9th Circuit misapplied the Supreme Court's decision in *Carciari* and reached a result that was clearly inconsistent with long settled law regarding collateral attacks on decisions of federal agencies, including those decisions involving fee-to-trust determinations by the Secretary of the Interior," said Eberhard, who was general counsel and staff director of the Senate Indian Affairs Committee from 1989 to 1995.

Beyond protecting millions of acres of land taken into trust for tribes by the Interior Department, this month's decision is also a landmark for environmental reasons, according to tribal attorney Scott Crowell, whose clients include the Rincon Band of Luiseno Indians in California.

"This is the clearest articulation we've had so far as to a court saying states are overreaching when they attempt to impose their environmental laws upon the tribes," Crowell said. "I think that's very significant."

The six-year limit for challenging the Interior Department's acquisition of lands for tribes should be reduced to two years, according to Crowell. But he said he does not think there will be a reduction in the near future.

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