

Case No. 15-17189

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**In the United States Court of Appeal**  
**For the Ninth Circuit**

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**NO CASINO IN PLYMOUTH and**  
**CITIZENS EQUAL RIGHTS ALLIANCE**  
*Plaintiffs – Appellants*

v.

**SALLY JEWELL, Secretary, U.S. Department of the Interior, et al.,**  
*Defendants – Appellees,*

*and*

**IONE BAND OF MIWOK INDIANS,**  
*Intervenor-Defendant – Appellee*

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**ANSWERING BRIEF**  
**OF IONE BAND OF MIWOK INDIANS**

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On Appeal from the United States District Court  
for the Eastern District of California  
The Honorable Troy L. Nunley, Presiding  
District Court Case No. 2:12-cv-01748-TLN-CMK

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**IONE BAND OF MIWOK INDIANS**

**CORPORATE DISCLOSURE STATEMENT**  
**FED. R. APP. PROC. 26.1**

Intervenor-Defendant – Appellee Ione Band of Miwok Indians is  
not a “nongovernmental corporate party.”

## CITATIONS

The following abbreviations are used throughout this Brief for citations to case documents and portions of the Record on Appeal:

- “NOB”: Plaintiffs-Appellants No Casino in Plymouth and Citizens Equal Rights Alliance Opening Brief, filed in this matter on April 1, 2016 as Docket No. 13. Citations to Plaintiffs’ Opening Brief are in the form “(NOB[page#]-[page#].)”
- “ER”: Plaintiffs-Appellants No Casino in Plymouth and Citizens Equal Rights Alliance Excerpts of the Record, filed in this matter on April 1, 2016 as Docket Nos. 14-1 through 14-4, with Plaintiffs-Appellants Opening Brief pursuant to Circuit Rule 30-1. Citations to Plaintiffs’ Excerpts of the Record are in the form “(ER[page #]-[page #].)”
- “ISER”: Intervenor-Defendant Ione Band of Miwok Indians’ Supplemental Excerpts of Record, filed herewith pursuant to Circuit Rule 30-1. Citations to the Intervenor-Defendant’s Supplemental Excerpts of Record are in the form “(ISER[page#]-[page#].)”
- “IAA”: Intervenor-Defendant Ione Band of Miwok Indians’ Addendum of Authorities, filed herewith pursuant to Fed. R. App. Proc. 28(f). Citations to the Intervenor-Defendant’s Addendum of Authorities are in the form “(IAA[page#]-[page#].)”
- “AR”: Citations to portions of the Administrative Record in this case that are not included in Plaintiffs’ Excerpts of the Record or Intervenor-Defendant’s Supplemental Excerpts of Record. Citations to the Administrative Record are in the form “(AR[page#]-[page#].)”

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## I. INTRODUCTION

Intervenor-Defendant Ione Band of Miwok Indians (“Ione Band,” “Ione” or “Tribe”) is a federally recognized Indian tribe whose relationship with the federal government, particularly the Department of the Interior’s (“DOI”) Bureau of Indian Affairs (“BIA”), spans centuries. Despite efforts by the federal government dating back to the early 1900s to restore the Tribe’s land base, and particularly a certain 40-acre parcel within its historical area, in which many of its members and their ancestors had lived for generations, the Tribe still lacks Indian lands. As a result, in 2005 the Tribe filed an application to have specific land in its historic area in Amador County (the “Plymouth Parcels”) taken into trust by the federal government under the Indian Reorganization Act (“IRA”), 25 U.S.C. §§ 461 *et seq.*<sup>1</sup> AR2751-3482. After a seven-year application process that included thousands of pages of record evidence, hundreds of hours of meetings and correspondence, and costly expert analyses, in 2012 DOI’s Acting Assistant Secretary-

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<sup>1</sup> This process of having fee land taken into trust by the government for the benefit of an Indian tribe, known as the “fee-to-trust” process, is governed exclusively by federal law and regulations. *See* 25 U.S.C. §§ 461 *et seq.*; 25 C.F.R. Part 151.

Indian Affairs Donald E. Laverdure (“Assistant Secretary – Indian Affairs”) determined in a well-reasoned Record of Decision (“ROD”) based on that extensive record that it would be appropriate and consistent with federal law and policy to grant the Tribe’s application and accept the Plymouth Parcels into trust for the Tribe’s benefit. (ISER0739-0806). Consistent with a prior 2006 DOI determination, the ROD also concluded that the proposed trust land acquisition would constitute the restoration of lands for a restored tribe for purposes of the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701 *et seq.*

## II. JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (IAA0029) based upon NCIP's civil action arising under the U.S. Constitution and laws of the United States. As this is a challenge on appeal by NCIP to federal agency action in DOI's issuance of the ROD and the authority of one of its officials to do so, the Administrative Procedure Act permits judicial review of such agency action. 5 U.S.C. §§ 701-706 (IAA0001-0008) ("APA"). The other statutes cited in NCIP's brief (NOB4), namely 28 U.S.C. § 2201, 25 U.S.C. § 2714, and 18 U.S.C. § 1166, are not independent bases for subject matter jurisdiction.

NCIP appeals from the district court's order filed on August 11, 2014 (ER40-49), denying NCIP's motion for judgment on the pleadings (Dkt. #71). NCIP also appeals from the district court's order filed on September 30, 2015 (Dkt.#100) (ER6-39), denying NCIP's motion for summary judgment (Dkt. #72); granting the cross-motions for summary judgment of the federal defendants (Dkt. #90) and of the intervenor-defendant (Dkt. #91); and disposing of all claims. The district court's final judgment (Dkt. #101)(ER5), from which NCIP does not appeal (*see*

ER1),<sup>2</sup> was entered on October 14, 2015, in accordance with the September 30, 2015 order.

This Court has appellate jurisdiction under 28 U.S.C. § 1291. NCIP timely filed this appeal on October 30, 2015 (ER1-4). Fed. R. App. Proc. (“FRAP”) 4(a)(1)(B).

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<sup>2</sup> To the extent of any defect caused by NCIP’s failure to appeal the final judgment, the Tribe does not waive any objections.

### III. ISSUES PRESENTED

1. Whether the district court correctly held that Acting Assistant Secretary-Indian Affairs Donald Laverdure was authorized under federal law to issue the Record of Decision dated May 2012 acquiring lands in trust for the Ione Band and determining such lands to be eligible for gaming under the Indian Gaming Regulatory Act?
2. Whether the district court correctly held that the Ione Band, a recognized Indian tribe, was under federal jurisdiction in 1934 and thereby qualifies under the Indian Reorganization Act to have lands taken into federal trust on its behalf, as determined in the May 2012 Record of Decision?

#### **IV. STATEMENT OF THE CASE**

##### **A. STATEMENT OF FACTS**

The Ione Band is a federally recognized Indian tribe. The Tribe traces its ancestry to Miwok peoples who have lived in California for thousands of years. (ISER5040-0585). The Miwoks' native lands included the Sierra Nevada Foothills of central California, covering lands that today make up Amador County. (ISER0545-0580). After gold was discovered in 1848, the U.S. government launched attempts to obtain land cessions from tribal inhabitants in exchange for safe set-aside lands and engaged in government-to-government negotiations with tribal leaders in California to enter into 18 treaties. (ISER0555-0590). Ancestors of current-day Ione Band members were among those who negotiated these treaties. (ISER0556-0593), (ISER0562). Sadly, however, the U.S. Senate refused to ratify any of the 18 California treaties, and the Miwok, who were in no position to resist or stem the inexorable flow of new arrivals, lost their native lands. (ISER0557-0593).

Cognizant of these circumstances, the BIA appointed Special Agent C.E. Kelsey in 1905-06 to examine the conditions of the



dispossessed and thus homeless California tribal members.

(ISER0562). Kelsey conducted a census for Amador County that enumerated, among others, those at Ione. (ISER0563-0564). The federal government revisited the Ione Band's situation in 1915, when BIA Special Indian Agent John J. Terrell conducted a census and identified Captain Charlie Maximo as the leader of the Ione Band, which then consisted of 101 individuals. (ISER0564-0567).

Special Agent Terrell also reported on the importance of securing land for the Tribe, and he and other government officials made significant efforts to do so. *See* (ISER0567), (ISER0651), (ISER0154), and multiple correspondence (ISER0001-0352). Accordingly, the government approved the purchase of land for the Ione Band and appropriated funds for this purpose. (ISER0093), (ISER0566), (ISER0643-644), (ISER0561). A 40-acre tract of land in Amador County located within a larger parcel was targeted for purchase because, as Terrell noted, “[T]hese Indians are among the most needy and worthy of any I have visited in California ...[and] the proposed purchase embraces the ancient Village of their and their ancestors’ home as far back as they have a history.” (ISER0638); *see also* (ISER0093, ISER0612-0692).

Early land deeds stated that the 40-acre tract had been “sold to the United States ... fenced, and used as an Indian Reservation” (ISER0353), and hundreds of pages of correspondence in the AR show that, in furtherance of that unequivocal act, for another two decades after the 1915 Terrell census government agents attempted to negotiate with the landowners to finalize some technical details regarding the land purchase (*see, e.g.*, ISER0001-0352). Those details continued to cloud some title issues on the 40-acre tract. (ISER0468), (ISER0568), (ISER0530-0538). Although these early land purchase efforts appear to have been ceased being pursued around 1941, the Tribe continued for decades to occupy the land that had been purchased for it by the federal government, as its members had done for decades prior. (ISER0568).

In 1972 BIA Commissioner Louis Bruce, the highest ranking federal official entrusted by Congress with administering Indian affairs (25 U.S.C. § 2) (IAA0011), and the predecessor in rank, function, and authority to the current DOI Assistant Secretary-Indian Affairs, sent a letter to the Ione Band confirming that federal recognition had been extended to the Band at the time of the land purchase efforts and agreeing, on behalf of the federal government, to take the 40-acre parcel

into trust for the Tribe's benefit pursuant to the IRA. (ISER0308).

Commissioner Bruce's confirmation that the IRA applied to Ione, and his unambiguous implementation of the government-to-government relationship between the Tribe and the federal government, was a formal federal action. (ISER0705).

Indeed, approximately two years later, then-Commissioner of Indian Affairs Morris Thompson reiterated the formal acknowledgment of Ione's previously recognized tribal status in a memorandum to the BIA Sacramento Area Director in which he confirmed Commissioner Bruce's conclusion that recognition had been extended to the Tribe at the time of the attempted land purchase by the United States. AR674, 873. He concluded, after reviewing the record submitted by the BIA Sacramento Area Director and other materials, that the Tribe was still recognized as of the date of his memo and "decided that it is unnecessary to insist that the group articulate and submit any further request for formal recognition." (ISER0426-0429).<sup>3</sup>

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<sup>3</sup> Commissioners Bruce and Thompson's confirmations of Ione's prior recognition were made before issuance of the Part 83 tribal acknowledgment procedures in 1978. The Commissioners' determinations made any subsequent pursuit by the Tribe of

Despite their official determinations, some DOI advisors and staff refused to adhere to the official directives. *See, e.g.*, (ISER0354-0355), (ISER0358) (stating Bruce decisions not implemented because of Solicitor's disagreement). Indeed, in the late 1970s until the early 1990s, the federal executive branch reversed its previous policy of treating Ione as a recognized tribe and for the first time began consistently taking the position that Ione was not federally recognized. By consistently denying that the Tribe was (or ever had been) federally recognized and failing to treat it as such, DOI instituted a *de facto* administrative termination of the Tribe's recognition.<sup>4</sup> *See, e.g.*, (ISER0468) and (ISER0693) (omission from federally recognized tribes list); *see also* (ISER0380), (ISER0398), (ISER0591-0606), (ISER0694), (ISER0705-0706), (ISER0792), (ISER0807), (ISER0811).

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recognition under Part 83 unnecessary, as Assistant Secretary Ada Deer would confirm. *See* AR7170-73.

<sup>4</sup> Importantly, throughout the Tribe's history of federal relations, the highest ranking officials authorized to handle Indian affairs, with the sole exception of Assistant Secretary-Indian Affairs Brown during the termination period, have consistently maintained that Ione is, and was in the past, federally recognized. The individuals who have denied Ione's federal recognition have been lower-ranking bureaucrats or attorneys, but never the authorized officials themselves.

Despite these hardships, the Tribe continued to insist on its past and present federal status and persevered in its attempt to secure a land base. In 1994 the federal government finally agreed, abandoning its termination policy and reverting to its previous position by formally re-recognizing the Tribe. In a determination dated March 22, 1994, Assistant Secretary-Indian Affairs<sup>5</sup> Ada Deer explicitly re-affirmed the Tribe's recognition, based on Commissioner Bruce's earlier recognition that itself had been based on the earlier recognition extended by the land purchase attempts, and instructed that land be taken into trust for the Tribe. (ISER0580), (ISER0581-0583). Because Tribal membership was embroiled in faction disputes around the time of re-affirmation, Assistant Secretary Deer and other DOI officials would make it clear that she intended to re-affirm the status of the entire Tribe at Ione and was not recognizing any particular faction or leader. (ISER0430-0447). Assistant Secretary Deer also instructed that Ione be given its rightful place on the official Federal Register list of federally recognized tribes

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<sup>5</sup> The position of Commissioner of Indian Affairs was replaced with Assistant Secretary-Indian Affairs in 1977. 42 Fed. Reg. 53682 (Oct. 3, 1977). Thus, Ada Deer was the highest ranking federal official with authority to administer Indian affairs in 1994.

and that the BIA deal with the Tribe accordingly. (ISER0580), (ISER0581-0583). The Tribe was placed on the list in 1995 (ISER0696) and has been on it ever since. Despite that official and publicly noticed action by DOI nearly 20 years ago, neither NCIP nor any other party has ever challenged the Tribe's inclusion on that list.

Several years after being restored to federal recognition, the Tribe sought to establish governmental and economic independence in order to provide for its members' health and welfare. Accordingly, the Tribe began a revitalized effort to have land in Amador County placed in trust. Income from a proposed gaming development on that trust land would enable the Tribe to provide its members with education, healthcare, housing, employment, and other basic necessities. Lacking funds to purchase and develop land on its own, in 2003 the Tribe engaged with a development partner who bought options to purchase the Plymouth Parcels in order to assist the Tribe in financing the purchase and development of land. (ISER0532), (ISER0539).

But federal law requires much more to conduct tribal gaming than simply purchasing land. IGRA restricts the lands upon which Indian tribes may operate gaming projects and provides that a tribe may only

operate gaming on land taken into trust after 1988 if one of several conditions is met. 25 U.S.C. § 2719 (IAA0024-0026). Thus, in order to be able to conduct a gaming operation, Ione would have to apply to have the Plymouth Parcels taken into trust and demonstrate that they meet the applicable post-1988 trust land criteria, in this instance that the land if taken into trust would be part of the “restoration of lands for an Indian tribe that is restored to federal recognition.” 25 U.S.C. § 2719(b)(1)(B)(iii) (IAA0024-0026). It would also have to comply with all of the requirements imposed by the 25 C.F.R. Part 151(IAA0085-0107) regulations that implement the Secretary’s trust land acquisition authority under the IRA. (ISER0746). Those regulations require, *inter alia*, compliance with the National Environmental Policy Act (“NEPA”), an intensive process to determine, analyze, and address issues related to the project’s potential impacts that elicits extensive input from federal, state and local agencies, organizations, and individuals. (ISER0746-0747). The Tribe’s NEPA process formally began in 2003 and would not conclude until the issuance of the ROD itself in 2012 (with well over half the ROD devoted to the NEPA analysis). (ISER0739-0806). Plaintiff-Appellant No Casino submitted comments

on a range of issues in the NEPA review process, which comments were considered prior to issuance of the ROD. *See, e.g.* AR 8256-59, 8436-8509.

In September 2004, Ione submitted a request for a determination (called an Indian Lands Determination, or Ione's "ILD") that the Plymouth Parcels would qualify as "restored lands" for Ione as a "restored tribe" if and when taken into trust. (ISER0460-0472). In support of its request, Ione submitted hundreds of pages of evidence. AR1414-2532; *see also, e.g.*, (ISER0510-0532), (ISER0540). Plaintiff-Appellant No Casino opposed Ione's ILD request. AR5104-17, 6726-32.

In November 2005, with the ILD request pending, the Tribe submitted its application to DOI to have the Plymouth Parcels taken into trust for gaming purposes. AR2751-3482. The fee-to-trust application, consisting of hundreds of pages of supporting documentation, set forth the legal and factual bases for the proposed action. (ISER0531-0538). As with the ILD, No Casino filed extensive comments opposing Ione's application. AR5388-5404, 9367-83, 1214-19, 1223-25.

In September 2006, DOI Associate Deputy Secretary James Cason



issued DOI's determination holding that the Plymouth Parcels would qualify as "restored lands" if acquired in trust and that Ione is a "restored tribe" for purposes of IGRA. (ISER0393). DOI's rationale was set forth in detail in a memorandum written by Associate Solicitor, Division of Indian Affairs, Carl Artman. (ISER0703-0707). Artman opined that Commissioner Louis Bruce's 1972 determination dealt with the Ione Band as a recognized tribe, such that Ione was formally recognized as of 1972 and thereafter. (ISER0705). Artman also opined that after 1972 the government had taken the position that Ione was not recognized, thereby terminating the Tribe, but that in 1994 Assistant Secretary Deer's re-affirmation actions restored the Tribe's earlier federally recognized status. (ISER0705-706). Cason, as the highest ranking federal official presiding over Indian affairs at the time, explicitly concurred in and adopted Artman's ILD as the official DOI position toward Ione. . (ISER0393) Thus, by 2006, DOI had determined that the Plymouth Parcels would qualify for gaming under IGRA if taken into trust. This determination has remained in effect since its issuance, despite the efforts of DOI Solicitor David Bernhardt in January 2009 to withdraw it via draft memoranda that were never

adopted by his client DOI and expressly denied and rejected by DOI and NIGC officials. (ISER0709), (ISER0711), (ISER0717-0719), (ISER0720-722), (ISER0715), (ISER0728-736), (ISER0737-738).

In February 2009 the Supreme Court issued its decision in *Carcieri v. Salazar*, holding that the Secretary is only authorized to take land into trust for the benefit of tribes that had been “under Federal jurisdiction” in 1934. Plaintiff-Appellant No Casino sent comments to BIA arguing that under *Carcieri* the Secretary lacked authority to take land into trust for Ione. *See, e.g.*, (ISER0727). The Tribe responded with its own comprehensive submissions providing extensive evidence that indeed the Ione Band had been under federal jurisdiction in 1934. AR8000-8210, 8872-9191.

In May 2012, after careful consideration of all of the documents in its files (including those submitted by NCIP and Tribe) and arguments presented on both sides, DOI issued the ROD, granting the Tribe’s request to take the Plymouth Parcels into trust as well as recording its adoption of the positive ILD. (ISER0739-741), (ISER0791).

## B. PROCEDURAL HISTORY

NCIP filed its original complaint in the district court on June 29, 2012 (Dkt. #2) and its first amended complaint on October 1, 2012 (Dkt. #10). The federal defendants filed their answer to the first amended complaint on December 10, 2012 (Dkt. #14) and lodged the administrative record with the court on May 3, 2013 (Dkt. #31). The Tribe filed its motion to intervene on June 6, 2013 (Dkt. #35), which was granted on September 12, 2013 (Dkt. #46), and the Tribe then filed its answer to the first amended complaint on November 26, 2013 (Dkt. #57).

On February 13, 2014, NCIP filed its motion for judgment on the pleadings solely as to its first claim for relief based on *Carcieri v. Salazar* (discussed further herein) (Dkt. #60), along with an accompanying request for judicial notice (Dkt. #62). Prior to opposing that motion, the federal defendants filed a supplement to the administrative record on February 19, 2014 (Dkt. #63), and then filed their opposition to NCIP's motion for judgment on the pleadings on March 13, 2014 (Dkt. #64). On the same day, the Tribe filed its opposition to NCIP's motion for judgment on the pleadings (Dkt. #65),

along with its objections to NCIP's request for judicial notice (Dkt. #66).

On August 11, 2014 the district court issued an order denying NCIP's motion for judgment on the pleadings, agreeing with the federal defendants that "Plaintiffs have not met their burden of establishing that their motion for judgment on the pleadings falls within an explicit waiver of the United States' sovereign immunity from suit and, as such, must rely on the limited waiver under the APA and seek administrative record-based review of agency action." Dkt. #71 at 5.<sup>6</sup> The order also concluded that the allegations in the federal defendants' answer raised a material issue of fact that precluded judgment on the pleadings. *Id.* at 9. The order established a briefing schedule for the parties' motions for summary judgment. *Id.* at 9.

NCIP filed its motion for summary judgment on October 14, 2014 solely as to its first claim for relief (Dkt. #72). The federal defendants

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<sup>6</sup> Contrary to NCIP's contentions (NOB7), the opposition by the federal defendants and the Tribe to NCIP's motion for judgment on the pleadings was not simply procedural in nature but rather jurisdictional. NCIP's motion for judgment on the pleadings sought to evade APA-required record review (see V. Standard of Review on Appeal, *infra*) through use of judicially noticed documents, but without full record review under the APA, there is no waiver of an agency's sovereign immunity. This is another basis on which the district court's August 11, 2014 order (Dkt. #71) should be upheld.

(Dkt. #90) and the Tribe (Dkt. #91) filed their respective cross-motions for summary judgment as to all claims on December 15, 2014. On September 30, 2015, the district court entered its memorandum and order denying NCIP's motion for summary judgment and granting the federal defendants' and Tribe's cross-motions as to all claims. Dkt. #100. The district court entered judgment in favor of the federal defendants and the Tribe on October 14, 2015 (Dkt. #101). NCIP filed its notice of appeal on October 30, 2015 (Dkt. #102).

## V. STANDARD OF REVIEW ON APPEAL

This Court reviews a district court's grant of summary judgment or judgment on the pleadings *de novo*, but applies the same standard of review used by the district court. *Cascadia Wildlands v. Bureau of Indian Affairs*, 801 F.3d 1105, 1110 (9th Cir. 2015); *Doe v. U.S.*, 419 F.3d 1058, 1061 (9th Cir. 2005). The applicable APA standard of review at 5 U.S.C. § 706(2)(A),(C)(IAA0008) provides that a reviewing court may only invalidate agency action "found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[; or] in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]" In making its determinations, "the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error." *Id.* at last paragraph.

The Ninth Circuit holds that "[t]his standard is met only where the party challenging the agency's decision meets a heavy burden of showing that 'the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be

ascribed to a difference in view or the product of agency expertise.”

*Managed Pharmacy Care v. Sebelius*, 716 F.3d 1235, 1244 (9th Cir. 2013) (citation omitted). The scope of review of agency action under this standard is narrow. *Peck v. Thomas*, 697 F.3d 767, 772 (9th Cir. 2012) (citation omitted). Agency action is to be affirmed as long as a reasonable basis exists for it. *Conservation Congress v. U.S. Forest Service*, 720 F.3d 1048, 1057-1058 (9th Cir. 2013) (citation omitted). A reasonable basis exists if the agency considered the relevant factors, articulated a rational connection between the facts found and the choices made, and in doing so has not made a clear error of judgment. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) (“*Citizens*”), superseded by statute on other grounds, Pub.L. No. 94-574, 90 Stat. 2721 (1976), as recognized in *Califano v. Sanders*, 430 U.S. 99, 105 (1977); *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 788, 795 (9th Cir. 2012).

Furthermore, agency action is presumed valid under the APA standard. *Peck*, 697 F.3d at 772 (citation omitted). The standard of review is highly deferential, and the agency’s decision is “entitled to a presumption of regularity[.]” *Citizens*, 401 U.S. at 415 (citation

omitted). Moreover, “[w]here there is conflicting evidence in the record, the [agency’s] determination is due deference – especially in areas of [its] expertise.” *Managed Pharmacy Care*, 716 F.3d at 1251 (internal quotation marks and citation omitted). In light of this deferential standard, “[t]he court is not empowered to substitute its judgment for that of the agency.” *Citizens*, 401 U.S. at 416.

The process by which this Court conducts APA review of agency action is unique. The reviewing court “is not required to resolve any facts in a review of an administrative proceeding. ... [T]he function of the [reviewing court] is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did.” *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769 (9th Cir. 1985) (citations omitted). “The ‘entire case’ on review is a question of law.” *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001) (citations omitted). The court’s determination of agency reasonableness is to be based upon a review of the administrative record before the agency at the time of its decision. *Citizens*, 401 U.S. at 420.



## VI. SUMMARY OF ARGUMENT

The district court's orders and final judgment in favor of the federal defendants and the Tribe should be upheld because the Assistant Secretary - Indian Affairs validly exercised authority under the IRA in determining to acquire the Plymouth Parcels in trust for the Ione Band for gaming purposes, which gaming would be conducted pursuant to IGRA. Based on the administrative record, the Acting Assistant Secretary - Indian Affairs rightfully determined that all necessary prerequisites to the exercise of IRA trust acquisition authority have been met, including that the Ione Band satisfies 25 U.S.C. § 479 ("Section 479") (IAA0022), which restricts such acquisitions to those who qualify as "Indian" and defines that term in relevant part to include "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction[.]" In the ROD, the Acting Assistant Secretary - Indian Affairs relied on the record in concluding that the requirement that the Tribe was "under Federal jurisdiction" in 1934 had been met.

NCIP's argument that the IRA's requirements have not been met is based on a misreading of the Supreme Court's opinion in *Carciere v.*

*Salazar*, 555 U.S. 379 (2009) (“*Carcieri*”). NCIP contends that *Carcieri* requires a tribe to have been federally recognized in 1934, in addition to being “under Federal jurisdiction” at that time, pursuant to Section 479. But as the concurring opinion of Justice Breyer in *Carcieri* observed (*id.* at 398-399), and subsequent case law opinions have noted, the majority opinion in *Carcieri* did not discuss, much less find a requirement of, federal recognition in 1934. NCIP’s contrary arguments are therefore misplaced as a basis for judicially overturning the ROD under the APA.

In an apparent concession to the weakness of that position, NCIP attempts to reinforce its argument about the Tribe’s alleged legally-insufficient recognition by asserting, albeit irrelevantly, that despite the actual fact of the Tribe’s earlier recognition, it is estopped from asserting that it was recognized prior to 1996. As explained above, the question of when the Tribe was recognized is immaterial. However, NCIP’s arguments are legally incorrect for other reasons as well, since they are based on a prior case entitled *Ione Band of Miwok Indians, et al. v. Harold Burris, et al.*, Civ. No. S-90-993 LKK (E.D. Cal., complaint filed Aug. 1, 1990)(“*Burris*”), which NCIP erroneously asserts held that Ione was never federally recognized. But *Burris* – which did not deal

with the question of whether Ione had ever been federally recognized and instead addressed the scope of the court's jurisdiction to consider the recognition process at that time because of an administrative process that was then in place (the actual holding was to remand the matter to DOI for determination) – does not support either collateral estoppel or judicial admissions against the Tribe. Collateral estoppel is inapplicable on several grounds, including the absence of re-litigation of an identical issue, lack of a prior judgment on the merits in which the issue to be re-litigated was decided and necessary, changes in intervening material facts, and differences in the burden of proof. Purported judicial admissions are similarly irrelevant because the purported admissions were only made in court status reports or by non-Tribal parties with no preclusive effect as to the Tribe.

In sum, in light of the extensive record and the exhaustive consideration and reasoned analysis given by DOI to all of the relevant issues, the ROD fully meets all the requirements for concluding under the IRA that DOI may and should take the Plymouth Parcels into trust status, and the ASSISTANT SECRETARY - INDIAN AFFAIRS therefore was duly authorized to issue it. No good cause under the APA

exists to set that administrative action aside. For all of the foregoing reasons, as explained in further detail below, the district court's orders and final judgment in favor of the federal defendants and the Tribe should be upheld.

## **VII. ARGUMENT**

### **A. THE ROD ISSUED FOR IONE IS VALID BECAUSE ACTING ASSISTANT SECRETARY DONALD LAVERDURE WAS FULLY AUTHORIZED TO ISSUE THE ROD TAKING LAND INTO TRUST UNDER THE IRA**

NCIP first argues (NOB17-22) that the ROD signed by Acting Assistant Secretary – Indian Affairs Donald Laverdure is void because he purportedly did not have authority to take land into trust under the IRA. This faulty claim is made based upon NCIP’s assertions that the Secretary of the Interior (“Secretary”) is a “principal officer” of the United States, which requires a Presidential appointment and a Senatorial confirmation under the U.S. Constitution, and in that role the Secretary exercises “significant authority pursuant to the laws of the United States.” NOB17-18. According to NCIP, the taking of land into trust for the benefit of a tribe is the exercise of significant authority and can only be exercised by a “principal officer” appointed by the President and confirmed by the Senate, with the corollary that the Secretary in such a role has no ability to delegate this authority. NOB18-19, 21-22. NCIP asserts that Acting Assistant Secretary - Indian Affairs Laverdure was not appointed by the President and confirmed by the Senate and therefore did not have the authority to

take land into trust for the Tribe. NOB19. Finally, NCIP argues that Mr. Laverdure's designation as temporary Acting Assistant Secretary - Indian Affairs when Assistant Secretary - Indian Affairs Larry Echo Hawk resigned violated the Federal Vacancies Reform Act of 1998, 5 U.S.C. §§ 3345 *et seq.* (NOB19-21). NCIP's argument entirely overlooks applicable law.

The Secretary is authorized to delegate her powers and duties to the Commissioner of Indian Affairs. 25 U.S.C. § 1a. That position was subsequently replaced with the position of Assistant Secretary - Indian Affairs. 42 Fed. Reg. 53682 (October 3, 1977). The Secretary has re-delegated her IRA authority to the Assistant Secretary - Indian Affairs through the DOI Manual. 109 DM 1, 209 DM 8 (providing Assistant Secretary – Indian Affairs is authorized to exercise all of the authority of the Secretary). The Federal Vacancies Reform Act, 5 U.S.C. §§ 3345 *et seq.*, provides that when an executive appointee is no longer able to perform his functions and duties, the first assistant to such officer may fill the vacancy on a temporary basis. *Id.* at §§ 3345(a)(1), 3346(a)(1). And the first assistant to the Assistant Secretary - Indian Affairs is the Principal Deputy Assistant Secretary - Indian Affairs. 110 DM 8.

As the federal defendants contended below, Assistant Secretary - Indian Affairs Echo Hawk put in place a succession plan that provided for the appointment of the Principal Deputy Assistant Secretary - Indian Affairs in his stead in case of resignation. ER24. Mr. Laverdure held such position at the time that Mr. Echo Hawk resigned as Assistant Secretary - Indian Affairs and thus Mr. Laverdure was made Acting Assistant Secretary - Indian Affairs (*id.*), fully in compliance with federal law. And Assistant Secretary - Indian Affairs Laverdure executed the ROD solely in his capacity as Acting Assistant Secretary - Indian Affairs. (ISER0806). Contrary to NCIP's claims, he was fully authorized to do so.

**B. THE IONE BAND IS ELIGIBLE TO HAVE LAND TAKEN INTO TRUST UNDER THE IRA BECAUSE IT IS A RECOGNIZED INDIAN TRIBE THAT WAS "UNDER FEDERAL JURISDICTION" IN 1934**

**1. Background of the Indian Reorganization Act and *Carcieri***

The Indian Reorganization Act (IRA) provides the general authority of the Secretary to take land into trust for tribes and individual Indians. 25 U.S.C. § 465 ("Section 465") (IAA0017). This

authority is explicitly “for the purpose of providing land for Indians[.]”<sup>7</sup> and “[t]itle to any lands or rights acquired pursuant to this Act ... shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired[.]” *Id.* The IRA defines “Indian” to “include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction[.]” 25 U.S.C. § 479.<sup>8</sup> The term “tribe” means “any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.” *Id.*

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<sup>7</sup> The IRA intended “to rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.” *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) (quoting H.R. Rep. No. 1804, 73rd Cong., 2d Sess., at 6 (1934)). This included the acquisition of land for tribes and individual Indians with and without an existing land base. *South Dakota v. U.S. Dep’t of the Interior*, 423 F.3d 790, 798 (8th Cir. 2005) (quoting and citing 1934 congressional reports); *Chase v. McMasters*, 573 F.2d 1011, 1015-1016 (8th Cir. 1978).

<sup>8</sup> The definition of “Indian” in the IRA includes three prongs. 25 U.S.C. §479 (IAA0022). The definition at issue in *Carcieri*, and here, is the first prong. The two other prongs of the definition, which are not at issue here but which are discussed in some of the cases NCIP cites, refer to “all persons who are descendants of such members [as provided in the first prong] who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.” *Id.*



In *Carcieri v. Salazar*, 555 U.S. 379 (“*Carcieri*”), the Supreme Court majority “h[e]ld that for purposes of § 479, the phrase ‘now under Federal jurisdiction’ refers to a tribe that was under federal jurisdiction at the time of the statute’s enactment. As a result, § 479 limits the Secretary’s authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the IRA was enacted in June 1934.” *Carcieri* at 382. The record in this case shows that the Ione Band, a recognized tribe, was under federal jurisdiction in 1934. As such, the ASSISTANT SECRETARY - INDIAN AFFAIRS’s determination in the ROD to acquire the Plymouth Parcels in trust for the Tribe complied with the IRA.

NCIP argues that the IRA does not authorize the acquisition of the Plymouth Parcels in trust for the benefit of the Tribe. They rely on three unsupported arguments to reach their erroneous conclusion.

**2. The Supreme Court in *Carcieri v. Salazar* did not hold that a tribe had to be federally recognized in 1934 to come within the purview of the IRA**

First, NCIP argues that the Court in *Carcieri* held that, in addition to being “under Federal jurisdiction” in 1934, a tribe also must have been *recognized* in 1934 in order for the provisions of the IRA to

apply. But the Court did not so hold. The Supreme Court's *Carcieri* opinion never even debated, much less held, that a tribe had to be recognized in 1934 in order to qualify for the benefits of the IRA, yet NCIP in numerous pages of its opening brief asserts this erroneous understanding of the case (never with a specific page citation)<sup>9</sup> and then incorrectly concludes that Ione does not qualify for an IRA trust land acquisition because it ostensibly was not a recognized tribe in 1934. *See, e.g.*, NOB5-6, 15, 23. This argument is manifestly wrong because the Supreme Court never made such a holding in *Carcieri* or in any other case.

The basic premise of NCIP's arguments are best refuted by the Court's express words:

In reviewing the determination of the Court of Appeals, we are asked to interpret the statutory phrase "now under Federal jurisdiction" in § 479. Petitioners contend that the term "now" refers to the time of the statute's enactment, and permits the Secretary to take land into trust for members of recognized tribes that were "under Federal jurisdiction" in 1934. The respondents argue that the word "now" is an ambiguous term that can reasonably be construed to authorize the Secretary to take land

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<sup>9</sup> NCIP further misinterprets the *Carcieri* opinion in numerous ways throughout its brief, including inaccuracies and mischaracterizations as to Justice Breyer's concurring opinion and Justice Souter's opinion concurring in part and dissenting in part (*see, e.g.*, NOB23-24 *compared with Carieri* at 396-401).

into trust for members of tribes that are “under Federal jurisdiction” at the time that the land is accepted into trust.

We agree with petitioners and hold that, for purposes of § 479, the phrase “now under Federal jurisdiction” refers to a tribe that was under federal jurisdiction at the time of the statute’s enactment. As a result, § 479 limits the Secretary’s authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the IRA was enacted in June 1934. Because the record in this case establishes that the Narragansett Tribe was not under federal jurisdiction when the IRA was enacted, the Secretary does not have the authority to take the parcel at issue into trust. We reverse the judgment of the Court of Appeals.

*Carcieri* at 382-383.

As this quote demonstrates, the only question considered about the phrase in question, and the only answer given, was whether a tribe had to be “under Federal jurisdiction” when the IRA was enacted in order to reap its benefits. No temporal connection between the enactment of the IRA and the date of recognition is found anywhere in the opinion.

As the separately written concurring opinions of Justices Breyer and Souter (joined by Justice Ginsburg) and the dissent of Justice Stevens all stressed, neither Section 479 nor the majority opinion express any limit on the tribal recognition requirement. *Carcieri* at 398, 400, 408. In fact, Justice Breyer cited specific (but not exclusive)

instances in which a tribe might be under federal jurisdiction but not actually “federally recognized” until much later. *Id.* at 397-400 (Breyer, J. concurring). This debate is largely academic as to Ione, however, because in 1972 Commissioner Bruce sent a letter to the Ione Band confirming that federal recognition had been extended to the Band at the time of the land purchase efforts in the early 1900s. ER428-429, (ISER0800).

The subsequent case law interpreting *Carcieri* also shows the flaws in NCIP’s assertions. That case law makes clear that at the very least the Supreme Court left open the question of whether a tribe must have been recognized in 1934 to qualify as “a recognized Indian tribe now under Federal jurisdiction.” *The Confederated Tribes of the Grand Ronde Cmty. of Oregon. v. Jewell*, 75 F.Supp.3d 387, 398-401 (D.D.C. 2014) (finding *Carcieri* majority did not address the issue and deferring to Secretary’s interpretation that “recognized” has no temporal limitation); *Stand Up for California v. U.S. Dep’t of the Interior*, 919 F.Supp.2d 51, 68-70 (D.D.C. 2013); *Cent. New York Fair Bus. Assoc. v. Jewell*, No. 6:08-cv-0660, 2015 WL 1400384, at \*10-11 (N.D.N.Y. Mar. 26, 2015).

**3. No case law has ever held that a tribe must have been recognized in 1934 in order to come within the purview of the IRA**

NCIP also attempts to support the notion that a tribe must have been recognized in 1934 to qualify for IRA benefits with faulty interpretations of *United States v. John*, 437 U.S. 634 (1978) (“*John*”); *Kahawaiolaa v. Norton*, 386 F.3d 1271 (9th Cir. 2004) (“*Kahawaiolaa*”); *Maynor v. Morton*, 510 F.2d 1254 (D.C. Cir. 1975) (“*Maynor*”); *City of Sault Ste. Marie v. Andrus*, 532 F.Supp. 157 (D.D.C. 1980) (“*City of Sault Ste. Marie*”); and *United States v. State Tax Commission of Mississippi*, 505 F.2d 633 (5th Cir. 1974) (“*State Tax Commission*”).

Without context, NCIP focuses on a single sentence in *John* stating that Section 479 defined “‘Indians’ not only as ‘all persons of Indian descent who are members of any recognized [in 1934] tribe now under Federal jurisdiction,’” as meaning that federal recognition in 1934 was required. NOB25. It does not.

The issue of whether a tribe had to be recognized in 1934 to qualify as a tribe under Section 479 was not before the Court in *John*. As the opinion states, the questions presented for the Court’s consideration were whether the lands at issue constituted “Indian

country” as defined in 18 U.S.C. § 1151 and as used in the Major Crimes Act of 1885, 18 U.S.C. § 1153, and if so, whether these statutes precluded the exercise of state criminal jurisdiction over certain offenses committed on such lands. *John*, 437 U.S. at 635. The Court explicitly stated that it only “hold[s] that § 1153 provides a proper basis for federal prosecution of the offense involved here, and that Mississippi has no power similarly to prosecute [the defendant] for that same offense.” *Id.* at 654. The “in 1934” parenthetical singled out by NCIP is only mentioned in passing by the Court, on its way to determining that the Choctaws of Mississippi qualify as Indians under the IRA because they satisfy another definition of “Indian” in Section 479, namely, as a community of “persons of one-half or more Indian blood” and therefore their lands qualify as “Indian country” for purposes of prosecutions under the Major Crimes Act. *Id.* at 647-650. Other than the “in 1934” parenthetical, there is no other reference to recognition in 1934 in *John*, much less is such issue decided. The parenthetical language was not and never has been deemed controlling law, and it is at most dicta.

Similarly, NCIP incorrectly claims that a statement in *Kahawaiolaa* means that the benefits of the IRA are available only to

tribes that were federally recognized in 1934. NOB25. But as with *John*, the issue of whether a tribe must have been federally recognized in 1934 to qualify under the first definition of “Indian” in Section 479 was not presented or considered in *Kahawaiolaa*, and therefore no such holding could come from the case. Rather, the court focused on whether DOI’s exclusion of native Hawaiians from eligibility to apply for recognition under the federal acknowledgment regulations constitutes discrimination in violation of the Fifth Amendment’s equal protection guarantees. *Kahawaiolaa*, 386 F.3d at 1272. The Court held only that under rational basis scrutiny, the regulations did not violate the Fifth Amendment. *Id.* Nevertheless, NCIP attempts to twist a factual assertion made by the Court into a holding by stating: “The Court held that ‘... [t]here were no recognized Hawaiian Indian tribes under federal jurisdiction in 1934, nor were there any reservations in Hawaii.’” NOB25 (quoting *Kahawaiolaa*, 386 F.3d at 1280). But the court’s statement is not a holding; it is a statement of fact that in 1934 none of the Hawaiian peoples were “tribes” (as defined in the IRA) under federal jurisdiction and none were recognized as “tribes.” *Kahawaiolaa*, 386 F.3d at 1280. The statement does not mean that a

tribe had to be recognized in 1934 to qualify for IRA benefits.

Furthermore, a plain reading of the language in *Kahawaiolaa* – in which the “in 1934” requirement is adjacent to the “under federal jurisdiction” requirement – shows that the “in 1934” requirement applies only to being under federal jurisdiction, and not to recognition. As such, the language cited by NCIP presaged the holding from *Carcieri* requiring a tribe to have been “under Federal jurisdiction” at the time of IRA enactment in June 1934. *Carcieri* at 382. *Kahawaiolaa* provides no support for NCIP’s erroneous and misleading argument.

The *Maynor* case is similarly not relevant because that court never addressed tribal recognition. The court determined that the plaintiff and his relatives did not have “any tribal designation, organization, or reservation” at the time of IRA enactment (*Maynor*, 510 F.2d at 1256), meaning at most they did not belong to a tribe. It says nothing about tribal recognition in 1934. And NCIP’s citation to the *State Tax Commission* case is unremarkable for the same reason. Again, that court only examined in relevant part whether the group at issue constituted a “tribe” at all, which the court answered in the negative. *State Tax Commission*, 505 F.2d at 642.



NCIP similarly misreads *City of Sault Ste. Marie*. The footnote quoted by the NCIP relates to a sentence stating, “Assuming, as plaintiff argues, that in order to benefit from the IRA a tribe must have been federally ‘recognized’ in 1934, [footnote reference] the question is whether the Chippewas were so recognized.” (underline added). *City of Sault Ste. Marie*, 532 F.Supp. at 160. The federal defendants only “grant[ed] this [necessity of recognition] point arguendo.” *Id.* at 160 n.6. And the court certainly did not hold as such.

In sum, *Carcieri* never held that a tribe had to be federally recognized in 1934, and neither has any case before or since. The case law cited by NCIP does not prove up its argument.

4. **Tribal recognition was not required in 1934 under the IRA; even if it were, the Federal Defendants and Tribe are not precluded by the *Burris* litigation as to Ione’s 1934 recognized status because the doctrines of collateral estoppel and judicial admissions are inapplicable**

NCIP next alleges that this Court held in *Burris* that the Tribe had not been recognized prior to 1996 and that the Tribe and federal defendants made statements in *Burris* to that effect, such that the doctrines of collateral estoppel and judicial admissions prevent them from arguing otherwise in this litigation. NOB27-35. But, as stated

above, the doctrines of collateral estoppel and judicial admissions do not apply.

a) **The doctrine of collateral estoppel is inapplicable**

NCIP's collateral estoppel arguments focus on the *Burris* litigation before the Honorable Judge Karlton. That case began in 1990 when the Tribe and individual Tribal members as plaintiffs filed a complaint against the U.S. and other individual Tribal members as defendants, seeking, *inter alia*, a declaration of the Tribe's status as a federally recognized tribe and an order quieting title in the Tribe's name to a 40-acre parcel of land, which the Tribe sought to have the government hold in federal trust. (ER365-366). The U.S. moved for summary judgment or to dismiss for lack of subject matter jurisdiction by virtue of the Tribe's failure to exhaust administrative remedies and as to time-barred claims. (ER366). The Court granted the U.S. motion by an April 23, 1992 order. (ER364-ER389). The plaintiffs then amended their complaint to add claims and Amador County officials as defendants. (ER381-389). The Court entered a final judgment as to these remaining parties on September 4, 1996. (ER403-410).

Under the doctrine of collateral estoppel, "once a court has decided

an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” *Dodd v. Hood River Cnty.*, 59 F.3d 852, 863 (9th Cir. 1995) (citation omitted). Offensive nonmutual collateral estoppel – which is subject to the court’s broad discretion – involves a plaintiff who seeks to prevent a defendant from relitigating an issue that the defendant previously litigated unsuccessfully against a different party. *Syverson v. Int’l. Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 (1979)). Nonmutual collateral estoppel requires that (1) there was a full and fair opportunity to litigate the identical issue in the prior action; (2) the issue was actually litigated; (3) the issue was necessary to and decided in a final judgment on the merits; and (4) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior action. *Syverson*, 472 F.3d at 1078; *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000).

The party asserting collateral estoppel “bears the burden of showing with clarity and certainty what was determined by the prior judgment.” *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1321 (9th

Cir. 1992) (citation omitted). The asserting party also bears the burden of proof as to each element of the doctrine. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1050-51 (9th Cir. 2008); *In re Brawders*, 503 F.3d 856, 867 (9th Cir. 2007). For collateral estoppel, “[i]t is not enough that the party introduce the decision of the prior court; rather, the party must introduce a sufficient record of the prior proceeding to enable the trial court to pinpoint the exact issues previously litigated.” *Clark*, 966 F.2d at 1321 (internal quotation marks and citation omitted)

Collateral estoppel is not applicable in this case because the purported issue identified by NCIP as subject to estoppel is not being litigated. The only question of law at issue is whether the Department’s determinations in the ROD meet the arbitrary and capricious standard based on the record. 5 U.S.C. § 706(2)(A) (IAA0008); *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001). That question has never been litigated. And in an APA proceeding, there are no disputed facts for the district court to resolve because the agency serves as the finder of fact. *Occidental Eng’g Co.*, 753 F.2d at 769-770. Since no issues of law or fact are being re-litigated, collateral estoppel does not apply.

Second, collateral estoppel is inapplicable because the issue NCIP asserts now, namely whether or not the Ione Band “was or is a federally recognized tribe” (NOB36), was not necessary to or decided in a judgment on the merits. Neither the April 23, 1992 order nor the following September 4, 1996 judgment in *Burris* satisfy that requirement.

The 1992 order in *Burris* required neither a determination of Ione’s status as a federally recognized tribe nor decided such status, and even if so, it was not a judgment on the merits. The order addressed the Tribe’s and individual plaintiffs’ claims against the U.S., two of which stemmed from the main claim seeking an order to compel the U.S. to recognize the Tribe. (ER373-374, 376). In regard to these claims, the U.S. moved for summary judgment on the ground that it had not waived its sovereign immunity from suit. (ER376-380). The court held that the U.S. had not waived its immunity as to these claims because the APA’s waiver only applies where there is final agency action, and the plaintiffs’ failure to apply for recognition through the 25 C.F.R. Part 83 administrative process barred their claims due to a lack of final agency action ripe for review. (ER376-380). This was the basis

for the court's refusal to accept jurisdiction over the plaintiffs' claims compelling recognition, and for its grant of the U.S. motion. (ER380). In other words, the order concerned the absence of a waiver of sovereign immunity by the U.S. and the court's resulting lack of jurisdiction over the plaintiffs' claims. (ISER0403) (November 19, 1992 order stating the U.S. motion had been granted because the U.S. had not waived its immunity from suit and plaintiffs' other claims were time-barred). The April 1992 order did not say that the Ione Band had never been previously recognized or place any limitations on how it might become recognized. (ER364-ER389). And even if it had, dismissal based on failure to exhaust administrative remedies is not an adjudication on the merits. *Heath v. Cleary*, 708 F.2d 1376, 1380 n.4 (9th Cir. 1983). NCIP's collateral estoppel argument fails.

Furthermore, the issue of Ione's recognized status was not necessary to or decided in the final September 4, 1996 *Burris* judgment. (ER396-401), (ER403-410). In fact, the judgment acknowledged Ione's existing recognized tribal status. *Id.* In this regard, NCIP's assertions (NOB34-35) that Judge Karlton ruled the Tribe "had no tribal government" and therefore was not recognized takes the Judge's ruling

out of context. When Judge Karlton said that the Tribe had no tribal government he meant that at the time he issued the 1996 judgment and related orders, the Tribe was in the throes of a split among competing factions vying for leadership of the Tribe. (ER396-401), ER403-406), (ER409), (ISER0446-0451). Because of the faction dispute, there was no identifiable leadership in the Tribal government capable of prosecuting the *Burris* litigation on behalf of the Tribe. *Id.* This ultimately resulted in the September 1996 order granting declaratory relief to the County, enabling it to exercise jurisdiction over the 40-acre historic fee parcel, until such time as the U.S. or a functioning Tribal government could challenge it. *Id.* Judge Karlton did not say there was no federally recognized Tribe; he said only that the Tribe had no functioning Tribal government to act on its behalf. As such, the issue of the Tribe's recognized status was not decided in or necessary to the 1996 judgment granting relief to the County, and NCIP's assertion of collateral estoppel also fails on this basis.

No judgment was entered as to the Tribe's recognized status because, between the time of the dismissal of the United States from *Burris* in 1992 and the final judgment in 1996, Assistant Secretary -

Indian Affairs Ada Deer re-affirmed Ione's status as a federally recognized tribe in 1994. (ER462). In fact, in 1995, DOI submitted an amicus filing in the *Burris* litigation, at the Court's request, informing the Court that Ione was federally recognized and listed in the 1995 Federal Register list of recognized tribes. (ISER0433-0439).

This intervening re-affirmation by Ada Deer provides yet another basis – a material change in essential facts – to disallow NCIP's use of collateral estoppel. Changes in facts essential to a judgment preclude assertion of collateral estoppel in a subsequent action raising the same issue. *Levi Strauss & Co. v. Blue Bell, Inc.*, 778 F.2d 1352, 1357 (9th Cir. 1985); *United States v. Certain Land at Irving Place and 16th St.*, 415 F.2d 265, 268-269 (2nd Cir. 1969), *amended*, 420 F.2d 370 (2nd Cir. 1969). The Tribe has remained on the federally recognized tribes list since its re-affirmation. 81 Fed. Reg. 26826, 26828 (May 4, 2016) (IAA0109-0131). Thus, even if the final 1996 *Burris* judgment incorporated the earlier 1992 Karlton order and even if that order stood for the non-recognition proposition alleged by NCIP (which it did not), there still has been a substantial intervening change in material facts by virtue of the Tribe's re-recognition that has gone uncontested.



Collateral estoppel cannot be asserted by NCIP under these circumstances.

This change in material facts pertaining to the re-affirmation of Ione's recognized status also negates any preclusive effect of the May 1992 IBIA decision cited by NCIP. NOB35. Indeed, the IBIA would itself change course in a decision issued in 1998, subsequent to both the 1992 IBIA decision and the 1996 final judgment in *Burris*. AR1175-90 (ISER0444-0449). In its 1998 decision, the IBIA acknowledged the Tribe's federally recognized status and government-to-government relationship with the U.S. AR1177 and n.4 (ISER0446), (ISER0451).

Furthermore, collateral estoppel does not apply because any issues litigated in the present action would be decided upon a different burden of proof or standard of review than the one applicable in *Burris*. An issue previously decided under a different burden of proof than when subsequently raised is not subject to preclusion. *Clark*, 966 F.2d at 1321-22; *Dias v. Elique*, 436 F.3d 1125, 1129 (9th Cir. 2006).

Challengers to agency action under the APA "arbitrary and capricious" standard bear a heavy burden in light of presumed agency regularity. *Managed Pharmacy Care*, 716 F.3d at 1244. Any *Burris* issues would

have been decided pursuant to a different civil action burden of proof. Accordingly, NCIP may not assert collateral estoppel.

Finally, NCIP cites a 1997 case initiated by the Nicolas Villa Jr. faction of the Tribe against Amador County (NOB35-36), but that case is irrelevant. In it, Judge Levi referenced Judge Karlton's 1996 order, which had held that because the Tribe did not have a functioning government, no one besides the United States could contest the exercise of jurisdiction by Amador County over the Tribe's historic fee lands until a legitimate Tribal government was formed. (ER416). With that order as background, Judge Levi found that Mr. Villa and his faction had failed to introduce any evidence showing that they were the legitimate Tribal government and held that they therefore could not contest the County's jurisdiction. (ER417). Judge Levi's order had nothing to do with the Tribe's federally recognized status, as NCIP alleges. Moreover, any ruling by Judge Levi in a case brought by Mr. Villa, and his fellow plaintiffs whom Judge Levi noted were not "the recognized government of the Ione Band," (ER417) has no preclusive effect on Ione because Mr. Villa is not the Tribe or in privity with the Tribe.

- b) **The doctrine of judicial admissions is immaterial and NCIP misleads the Court by raising it against the Tribe with a statement made by individual Tribal members**

NCIP wrongly claims that the United States and the purported “Burris faction of the Ione Band” (who were co-defendants with the United States in the *Burris* litigation) made judicial admissions in status reports filed in that court stating that the Tribe has never been a federally recognized tribe. (NOB30). Such claims are wrong and misleading.

In *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988), the court stated that “factual assertions in pleadings and pretrial orders ... are considered judicial admissions conclusively binding on the party who made them.” (Emphasis added.) The assertions cited by NCIP as made by both the United States (ER264-265) and the Burris co-defendants (ER269-270) were made in status reports, which are neither “pleadings” nor “pretrial orders.” As such, the statements attributed to the *Burris* litigation defendants cannot constitute judicial admissions. Furthermore, the statement in the non-federal status report was made on behalf of individuals defendants, not the plaintiff Tribe, and judicial admissions are only “conclusively binding on the

party that made them.” Thus, no admissions by the Tribe are at issue.

5. ***Carcieri* did not interpret the IRA’s ambiguous phrase “under federal jurisdiction”; therefore, the Secretary’s reasonable interpretation of that phrase is owed deference under *Chevron* and was validly applied to Ione in the ROD**

NCIP concludes that Acting Assistant Secretary - Indian Affairs Laverdure acted contrary to law when he purportedly created a two-part analysis to interpret the ambiguous IRA phrase “under Federal jurisdiction” and applied that test to Ione in the ROD to conclude that the Tribe was “under Federal jurisdiction” in 1934. NOB37-39. NCIP is flatly wrong.

First, it was the Secretary, not the Acting Assistant Secretary - Indian Affairs, who developed the two-part inquiry. (ISER0793). DOI incorporated and applied that test to Ione in the ROD, which the Acting Assistant Secretary - Indian Affairs signed. (ISER0793-0802)

That interpretation of the phrase “under Federal jurisdiction” as used in the IRA was necessary because it is ambiguous and has no clear meaning. The phrase is not defined within the IRA, and the law’s legislative history sheds no light on its meaning. The Secretary, as head of the agency delegated principal authority over Indian affairs (25

U.S.C. §§ 2 (IAA0011), 9(IAA0012); 43 U.S.C. § 157)(IAA0030-0031), had to interpret its meaning to continue exercising the authority granted in IRA Section 465 to acquire trust land for tribes like Ione. (ISER0793). District court opinions issued since *Carcieri* have agreed with this position. *The Confederated Tribes of the Grand Ronde Cmty. of Oregon*, 75 F.Supp.3d at 401-404; *Cent. New York Fair Bus. Assoc.*, No. 6:08-cv-0660, 2015 WL 1400384 at \*5-7. Such agency interpretation of a statute it administers is judicially reviewed pursuant to the Supreme Court's two-part framework established in *Chevron, USA, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-843 (1984), and is to be accorded "considerable weight" (*Id.* at 844).

Although *Carcieri* did not define "under Federal jurisdiction," Justice Breyer's concurring opinion pointed out that historically there were tribes under federal jurisdiction in 1934 but which were only formally recognized much later. *Carcieri* at 397-399 (Breyer, J. concurring). More generally, Justice Breyer correctly noted that DOI has later recognized some tribes "on grounds that showed that it should have recognized them in 1934 even though it did not. And the Department has sometimes considered that circumstance sufficient to

show that a tribe was ‘under Federal jurisdiction’ in 1934[.]” *Id.* at 398 (Breyer, J. concurring).

That approach that a tribe like Ione that was formally recognized after 1934 may nonetheless have been under federal jurisdiction in 1934 was adopted by the Assistant Secretary - Indian Affairs in the ROD and is supported by substantial evidence of Ione’s being under federal jurisdiction in 1934. This evidence is extensively summarized in the ROD. (ISER0796-0802).

Furthermore, in light of the ambiguity in the phrase “under Federal jurisdiction” and the deference owed under *Chevron* to agency interpretation, DOI’s analysis of whether Ione met the “under federal jurisdiction” requirement could hardly be deemed invalid under the APA. The Secretary’s two-part analysis, as set forth in Ione’s ROD ((SER0793-0796), is rational and well-supported.

Relying on evidence in the AR, the ROD sets forth Ione’s history, starting with the fact that the Band is a successor in interest to the signatories of one of 18 unratified treaties negotiated with the U.S. in the mid-1800s, and continuing through the 2011 acknowledgment in *Muwekma Ohlone Tribe v. Salazar*, 813 F.Supp.2d 170 (D.D.C. 2011),

that the Ione Band had a longstanding and continuing government-to-government relationship with the United States starting prior to 1934. (ISER0796-0801). The ROD's application of the two-part inquiry to Ione's history provides a detailed explanation of how the Secretary rationally concluded that Ione was "under Federal jurisdiction" prior to and in 1934. (ISER0796-0801). Again, DOI's process and determinations are entitled to a presumption of regularity, and the ROD more than reinforces the validity of that presumption.

In concluding, NCIP mischaracterizes as "weak" the evidence in the record showing Ione to have been "under Federal jurisdiction" in 1934. NOB38. On the contrary, the AR upon which the ROD relies is replete with evidence showing the jurisdictional relationship between Ione and the federal government that started over a century ago and continues through today. Furthermore, the test under the APA is not whether the supporting facts are "weak" but whether there is a rational basis for the determinations made by the agency. There is absolutely nothing irrational about the determinations made as to Ione in the ROD.

NCIP attacks the ROD's reliance on the fact that Ione is a

successor in interest to signatories of Treaty J, arguing that such evidence should be dismissed because there is no evidence that Ione was party and the treaty is unratified, making it a contractual legal nullity. (COB38). But NCIP misses the point.

The references in the ROD to Ione being a successor-in-interest to treaty signatories is not intended to support a claim under the treaties. Rather, because Treaty J was intended to “set apart [lands] forever for the sole use and occupancy of the tribes whose representatives signed the treaty” (ISER0558), the ROD’s references show that such treaty negotiations were part of a course of dealings with the federal government that went up through and past the 2011 *Muwekma Ohlone Tribe v. Salazar*, case cited in the ROD that acknowledged Ione’s long government-to-government relationship with the U.S. (ISER0797-0798). Those dealings occurred over a long period of Ione’s history prior to and in 1934, providing a substantial basis for the Tribe to be deemed “under Federal jurisdiction” for IRA purposes. And in addition to the *Muwekma Ohlone Tribe* case acknowledgment of Ione’s history, a federal district court has agreed with this treaty successor in interest approach. *Stand Up for California!*, 919 F.Supp.2d at 69 n. 22.



Finally, NCIP asserts that the early 1900s land purchase efforts were on behalf of “Ione Indians as ‘homeless Indian[s]’ and not as a tribe or government.” NOB38-39. The facts in the ROD say otherwise, but even more importantly, at least two documents in NCIP’s own Excerpts of the Record actually prove this assertion to be false. *See* ER423 (1916 DOI appropriations authority for “the purchase of 40 acres of land in Amador County, California ... for the use of 101 homeless California Indians, designated as the Ione Band...”); ER426 (1972 letter from BIA Acting Area Director to the Commissioner of Indian Affairs stating that a records search “found that the Bureau attempted to purchase the property for the Ione Band of Indians during the period 1916 to 1930” but was never able to get clear title) (emphasis added).

Again, the evidence in the record supporting the reasonable conclusions reached in Ione’s ROD is substantial, and the Secretary’s two-part inquiry for determining whether a tribe was “under Federal jurisdiction” in 1934 is rational, both analytically and as applied to Ione. The ROD is valid and should be upheld.<sup>10</sup>

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<sup>10</sup> NCIP alleges that it challenged the federal defendants’ determinations that the trust acquisition provided for in the Ione ROD would constitute the restoration of lands for an Indian tribe restored to

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federal recognition under 25 U.S.C. § 2719(b)(1)(B)(iii) (IAA0024-0026). NOB14 n. 4. NCIP then asserts that it incorporates by reference the argument of the County of Amador, California, on that issue in the case on appeal before this Court, *County of Amador, California v. Jewell*, Case No. 15-17253 (notice of appeal filed November 10, 2015). To the extent this Court permits such incorporation of Amador County's argument on that issue, the Tribe incorporates by this reference its opposition from the Tribe's answering brief in that case to Amador County's arguments.

### **VIII. CONCLUSION**

The district court's judgment in favor of the Federal Defendants and the Tribe should be **AFFIRMED**.

Respectfully submitted this 30<sup>th</sup> day of July, 2016.

HOLLAND & KNIGHT LLP

By: /s/ Jerome L. Levine  
Jerome L. Levine

By: /s/ Timothy Q. Evans  
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*Attorneys for*  
*Intervenor-Defendant – Appellee*  
IONE BAND OF MIWOK INDIANS

**STATEMENT OF RELATED CASES – CIRCUIT RULE 28-2.6**

*County of Amador, California v. United States Department of the Interior*, Case No. 2:12-cv-01710-TLN-CKD (E.D. Cal.) was designated by the District Court as related to this case, raises the same or closely related issues, and involves the same transactions and events. That case is currently pending on appeal in this Court. *See* Case No. 15-17253 (9th Cir. filed Nov. 10, 2015).

Dated: July 30, 2016

HOLLAND & KNIGHT LLP

By: /s/ Jerome L. Levine  
Jerome L. Levine

By: /s/ Timothy Q. Evans  
Timothy Q. Evans

*Attorneys for*  
*Intervenor-Defendant – Appellee*  
IONE BAND OF MIWOK INDIANS

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Signature Timothy Evans

Attorney for Ione Band of Miwok Indians

Date 07/30/2016

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Case No. 15-17189

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**In the United States Court of Appeal**  
**For the Ninth Circuit**

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**NO CASINO IN PLYMOUTH and**  
**CITIZENS EQUAL RIGHTS ALLIANCE**  
*Plaintiffs – Appellants*

v.

**SALLY JEWELL, Secretary, U.S. Department of the Interior, *et al.*,**  
*Defendants – Appellees,*

*and*

**IONE BAND OF MIWOK INDIANS,**  
*Intervenor-Defendant – Appellee*

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**ADDENDUM OF AUTHORITIES**  
**OF IONE BAND OF MIWOK INDIANS**

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On Appeal from the United States District Court  
for the Eastern District of California  
The Honorable Troy L. Nunley, Presiding  
District Court Case No. 2:12-cv-01748-TLN-CMK

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**IONE BAND OF MIWOK INDIANS**

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**Addendum of Authorities (“IAA”)  
of Intervenor-Defendant – Appellee Ione Band of Miwok Indians  
Pursuant to Fed. R. App. Proc. 28(f)**

No Casino in Plymouth and Citizens Equal Rights Alliance

v.

United States Department of the Interior, *et al.*,

Case No. 15-17189

| <b>No.</b> | <b>Document Description</b> | <b>IAA<br/>Pages</b> |
|------------|-----------------------------|----------------------|
| 1          | 5 U.S.C. §§ 701-706         | IAA0001<br>– 0008    |
| 2          | 18 U.S.C. § 1166            | IAA0009              |
| 3          | 25 U.S.C. § 1a              | IAA0010              |
| 4          | 25 U.S.C. § 2               | IAA0011              |
| 5          | 25 U.S.C. § 9               | IAA0012              |
| 6          | 25 U.S.C. § 461             | IAA0013              |
| 7          | 25 U.S.C. § 462             | IAA0014              |
| 8          | 25 U.S.C. § 463             | IAA0015              |
| 9          | 25 U.S.C. § 464             | IAA0016              |
| 10         | 25 U.S.C. § 465             | IAA0017              |
| 11         | 25 U.S.C. § 476             | IAA0018<br>– 0020    |
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| 17         | 28 U.S.C. § 1291            | IAA0028              |
| 18         | 28 U.S.C. § 1331            | IAA0029              |
| 19         | 43 U.S.C. § 157             | IAA0030<br>– 0031    |



| No. | Document Description                    | IAA<br>Pages      |
|-----|-----------------------------------------|-------------------|
| 20  | 25 C.F.R Part 83                        | IAA0032<br>– 0084 |
| 21  | 25 C.F.R. Part 151                      | IAA0085<br>– 0107 |
| 22  | 42 Fed. Reg. 53682 (Oct. 3, 1977)       | IAA0108           |
| 23  | 81 Fed. Reg. 26826, 26828 (May 4, 2016) | IAA0109<br>– 0131 |



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Proposed Legislation

United States Code Annotated  
Title 5. Government Organization and Employees (Refs & Annos)  
Part I. The Agencies Generally  
Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 701

§ 701. Application; definitions

Effective: January 4, 2011

[Currentness](#)

(a) This chapter applies, according to the provisions thereof, except to the extent that--

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter--

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by [sections 1738, 1739, 1743, and 1744 of title 12](#); subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;<sup>1</sup> and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by [section 551](#) of this title.

#### **CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392; [Pub.L. 103-272](#), § 5(a), July 5, 1994, 108 Stat. 1373; [Pub.L. 111-350](#), § 5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

#### [Notes of Decisions \(848\)](#)

#### Footnotes

<sup>1</sup> See References in Text note set out under this section.

5 U.S.C.A. § 701, 5 USCA § 701

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

United States Code Annotated

Title 5. Government Organization and Employees (Refs & Annos)

Part I. The Agencies Generally

Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 702

§ 702. Right of review

[Currentness](#)

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States 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 color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392; [Pub.L. 94-574](#), § 1, Oct. 21, 1976, 90 Stat. 2721.)

[Notes of Decisions \(1214\)](#)

5 U.S.C.A. § 702, 5 USCA § 702

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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| United States Code Annotated<br>Title 5. Government Organization and Employees (Refs & Annos)<br>Part I. The Agencies Generally<br>Chapter 7. Judicial Review (Refs & Annos) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

5 U.S.C.A. § 703

§ 703. Form and venue of proceeding

Currentness

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392; [Pub.L. 94-574](#), § 1, Oct. 21, 1976, 90 Stat. 2721.)

[Notes of Decisions \(88\)](#)

5 U.S.C.A. § 703, 5 USCA § 703

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 5. Government Organization and Employees (Refs & Annos)  
Part I. The Agencies Generally  
Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 704

§ 704. Actions reviewable

Currentness

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

Notes of Decisions (926)

5 U.S.C.A. § 704, 5 USCA § 704

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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Proposed Legislation

United States Code Annotated  
Title 5. Government Organization and Employees (Refs & Annos)  
Part I. The Agencies Generally  
Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 705

§ 705. Relief pending review

Currentness

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Notes of Decisions (54)

5 U.S.C.A. § 705, 5 USCA § 705

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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Unconstitutional or Preempted Limitation Recognized by [Krafsur v. Davenport](#), 6th Cir.(Tenn.), Dec. 04, 2013



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[United States Code Annotated](#)

[Title 5. Government Organization and Employees \(Refs & Annos\)](#)

[Part I. The Agencies Generally](#)

[Chapter 7. Judicial Review \(Refs & Annos\)](#)

5 U.S.C.A. § 706

§ 706. Scope of review

[Currentness](#)

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to [sections 556](#) and [557](#) of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)



[Notes of Decisions \(3684\)](#)

5 U.S.C.A. § 706, 5 USCA § 706

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated  
Title 18. Crimes and Criminal Procedure (Refs & Annos)  
Part I. Crimes (Refs & Annos)  
Chapter 53. Indians (Refs & Annos)

18 U.S.C.A. § 1166

§ 1166. Gambling in Indian country

Currentness

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term “gambling” does not include--

(1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or

(2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

**CREDIT(S)**

(Added Pub.L. 100-497, § 23, Oct. 17, 1988, 102 Stat. 2487.)

Notes of Decisions (13)

18 U.S.C.A. § 1166, 18 USCA § 1166

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

## United States Code Annotated

## Title 25. Indians

## Chapter 1. Bureau of Indian Affairs (Refs &amp; Annos)

## 25 U.S.C.A. § 1a

## § 1a. Delegation of powers and duties by Secretary of the Interior and Commissioner of Indian Affairs

## Currentness

For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior pursuant to law. Subject to the supervision and direction of the Secretary, the Commissioner is authorized to delegate, in like manner, any powers and duties so delegated to him by the Secretary, or vested in him by law, to the assistant commissioners, or the officer in charge of any branch, division, office, or agency of the Bureau of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior or the Commissioner of Indian Affairs pursuant to law. Such delegated powers shall be exercised subject to appeal to the Secretary, under regulations to be prescribed by him, or, as from time to time determined by him, to the Deputy Secretary or to an Assistant Secretary of the Department of the Interior, or to the Commissioner of Indian Affairs. The Secretary or the Commissioner, as the case may be, may at any time revoke the whole or any part of a delegation made pursuant to this section, but no such revocation shall be given retroactive effect. Nothing in this section shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this section be deemed to convey authority to delegate any power to issue regulations.

**CREDIT(S)**

(Aug. 8, 1946, c. 907, 60 Stat. 939; Nov. 5, 1990, [Pub.L. 101-509, Title V, § 529](#) [Title I, § 112 (c)], 104 Stat. 1454.)

[Notes of Decisions \(6\)](#)

25 U.S.C.A. § 1a, 25 USCA § 1a

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 1. Bureau of Indian Affairs (Refs & Annos)

25 U.S.C.A. § 2

§ 2. Duties of Commissioner

Currentness

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

**CREDIT(S)**

(R.S. § 463.)

Notes of Decisions (65)

25 U.S.C.A. § 2, 25 USCA § 2

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 1. Bureau of Indian Affairs (Refs & Annos)

25 U.S.C.A. § 9

§ 9. Regulations by President

Currentness

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

**CREDIT(S)**

(R.S. § 465.)

Notes of Decisions (26)

25 U.S.C.A. § 9, 25 USCA § 9

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 461

§ 461. Allotment of land on Indian reservations

Currentness

On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

**CREDIT(S)**

(June 18, 1934, c. 576, § 1, 48 Stat. 984.)

Notes of Decisions (17)

25 U.S.C.A. § 461, 25 USCA § 461

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 462

§ 462. Existing periods of trust and restrictions on alienation extended

Currentness

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress.

**CREDIT(S)**

(June 18, 1934, c. 576, § 2, 48 Stat. 984.)

Notes of Decisions (11)

25 U.S.C.A. § 462, 25 USCA § 462

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 463

§ 463. Restoration of lands to tribal ownership

Currentness

**(a) Protection of existing rights**

The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further,* That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

**(b) Papago Indians; permits for easements, etc.**

(1), (2) Repealed. May 27, 1955, c. 106, § 1, 69 Stat. 67.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of this Act, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided,* That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further,* That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes.

**CREDIT(S)**

(June 18, 1934, c. 576, § 3, 48 Stat. 984; Aug. 28, 1937, c. 866, 50 Stat. 862; May 27, 1955, c. 106, § 1, 69 Stat. 67.)

Notes of Decisions (19)

25 U.S.C.A. § 463, 25 USCA § 463

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.



United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 464

§ 464. Transfer and exchange of restricted Indian lands and shares of Indian tribes and corporations

Currentness

Except as provided in this Act, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized under this Act shall be made or approved: *Provided*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived, or to a successor corporation: *Provided further*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 ([Public Law 108-374](#); [25 U.S.C. 2201](#) note), lands and shares described in the preceding proviso shall descend or be devised to any member of an Indian tribe or corporation described in that proviso or to an heir or lineal descendant of such a member in accordance with the Indian Land Consolidation Act ([25 U.S.C. 2201 et seq.](#)), including a tribal probate code approved, or regulations promulgated under, that Act: *Provided further*, That the Secretary of the Interior may authorize any voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in the judgment of the Secretary, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

**CREDIT(S)**

(June 18, 1934, c. 576, § 4, 48 Stat. 985; Sept. 26, 1980, [Pub.L. 96-363, § 1, 94 Stat. 1207](#); Nov. 7, 2000, [Pub.L. 106-462, Title I, § 106\(c\)](#), 114 Stat. 1991; Oct. 27, 2004, [Pub.L. 108-374, § 6\(d\)](#), 118 Stat. 1805; Dec. 30, 2005, [Pub.L. 109-157, § 8\(b\)](#), 119 Stat. 2952; May 12, 2006, [Pub.L. 109-221, Title V, § 501\(b\)\(1\)](#), 120 Stat. 343.)

Notes of Decisions (7)

25 U.S.C.A. § 464, 25 USCA § 464

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 465

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

Currentness

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended ([25 U.S.C. 608 et seq.](#)) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

**CREDIT(S)**

(June 18, 1934, c. 576, § 5, 48 Stat. 985; Nov. 1, 1988, [Pub.L. 100-581, Title II, § 214](#), 102 Stat. 2941.)

[Notes of Decisions \(164\)](#)

25 U.S.C.A. § 465, 25 USCA § 465

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 476

§ 476. Organization of Indian tribes; constitution and bylaws and amendment thereof; special election

Effective: March 2, 2004

[Currentness](#)

**(a) Adoption; effective date**

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when--

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

**(b) Revocation**

Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) of this section for the adoption of a constitution or bylaws.

**(c) Election procedure; technical assistance; review of proposals; notification of contrary-to-applicable law findings**

(1) The Secretary shall call and hold an election as required by subsection (a) of this section--

(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall--

(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

**(d) Approval or disapproval by Secretary; enforcement**

(1) If an election called under subsection (a) of this section results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

**(e) Vested rights and powers; advisement of presubmitted budget estimates**

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

**(f) Privileges and immunities of Indian tribes; prohibition on new regulations**

Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

**(g) Privileges and immunities of Indian tribes; existing regulations**

Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

**(h) Tribal sovereignty**

Notwithstanding any other provision of this Act--

(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).

**CREDIT(S)**

(June 18, 1934, c. 576, § 16, 48 Stat. 987; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Nov. 1, 1988, [Pub.L. 100-581, Title I, § 101](#), 102 Stat. 2938; May 31, 1994, [Pub.L. 103-263, § 5\(b\)](#), 108 Stat. 709; Mar. 14, 2000, [Pub.L. 106-179, § 3](#), 114 Stat. 47; Mar. 2, 2004, [Pub.L. 108-204, Title I, § 103](#), 118 Stat. 543.)

[Notes of Decisions \(160\)](#)

25 U.S.C.A. § 476, 25 USCA § 476

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 14. Miscellaneous

Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 478

§ 478. Acceptance optional

[Currentness](#)

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

**CREDIT(S)**

(June 18, 1934, c. 576, § 18, 48 Stat. 988.)

[Notes of Decisions \(4\)](#)

25 U.S.C.A. § 478, 25 USCA § 478

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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 KeyCite Yellow Flag - Negative Treatment  
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United States Code Annotated  
Title 25. Indians  
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Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

25 U.S.C.A. § 479

§ 479. Definitions

Currentness

The term “Indian” as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term “tribe” wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words “adult Indians” wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

#### CREDIT(S)

(June 18, 1934, c. 576, § 19, 48 Stat. 988.)

#### Notes of Decisions (29)

25 U.S.C.A. § 479, 25 USCA § 479

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 25. Indians

Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2714

§ 2714. Judicial review

Currentness

Decisions made by the Commission pursuant to [sections 2710](#), [2711](#), [2712](#), and [2713](#) of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of Title 5.

**CREDIT(S)**

([Pub.L. 100-497](#), § 15, Oct. 17, 1988, 102 Stat. 2483.)

[Notes of Decisions \(58\)](#)

25 U.S.C.A. § 2714, 25 USCA § 2714

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated  
Title 25. Indians (Refs & Annos)  
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2719

§ 2719. Gaming on lands acquired after October 17, 1988

Currentness

**(a) Prohibition on lands acquired in trust by Secretary**

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

**(b) Exceptions**

(1) Subsection (a) of this section will not apply when--

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of--

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to--

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under [sections 465](#) and [467](#) of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

**(c) Authority of Secretary not affected**

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

**(d) Application of Title 26**

(1) The provisions of Title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under [section 2710\(d\)\(3\)](#) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

**CREDIT(S)**

(Pub.L. 100-497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

#### [Notes of Decisions \(70\)](#)

25 U.S.C.A. § 2719, 25 USCA § 2719

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Negative Treatment Reconsidered by [Florida ex rel. Atty. Gen. v. U.S. Dept. of Health and Human Services](#),  
11th Cir.(Fla.), Aug. 12, 2011

[United States Code Annotated](#)  
[Title 28. Judiciary and Judicial Procedure \(Refs & Annos\)](#)  
[Part VI. Particular Proceedings](#)  
[Chapter 151. Declaratory Judgments \(Refs & Annos\)](#)

28 U.S.C.A. § 2201

§ 2201. Creation of remedy

Effective: March 23, 2010

[Currentness](#)

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under [section 7428 of the Internal Revenue Code of 1986](#), a proceeding under [section 505](#) or [1146 of title 11](#), or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

**CREDIT(S)**

(June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349; Oct. 4, 1976, [Pub.L. 94-455, Title XIII, § 1306\(b\)\(8\)](#), 90 Stat. 1719; Nov. 6, 1978, [Pub.L. 95-598, Title II, § 249](#), 92 Stat. 2672; Sept. 24, 1984, [Pub.L. 98-417, Title I, § 106](#), 98 Stat. 1597; Sept. 28, 1988, [Pub.L. 100-449, Title IV, § 402\(c\)](#), 102 Stat. 1884; Nov. 16, 1988, [Pub.L. 100-670, Title I, § 107\(b\)](#), 102 Stat. 3984; Dec. 8, 1993, [Pub.L. 103-182, Title IV, § 414\(b\)](#), 107 Stat. 2147; Mar. 23, 2010, [Pub.L. 111-148, Title VII, § 7002\(c\)\(2\)](#), 124 Stat. 816.)

**TERMINATION OF AMENDMENT**

<For termination of amendment by section 501(c) of [Pub.L. 100-449](#), see Sunset Provisions note set out under this section.>

[Notes of Decisions \(3671\)](#)

28 U.S.C.A. § 2201, 28 USCA § 2201

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

|                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <a href="#">United States Code Annotated</a><br><a href="#">Title 28. Judiciary and Judicial Procedure (Refs &amp; Annos)</a><br><a href="#">Part IV. Jurisdiction and Venue (Refs &amp; Annos)</a><br><a href="#">Chapter 83. Courts of Appeals (Refs &amp; Annos)</a> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

28 U.S.C.A. § 1291

§ 1291. Final decisions of district courts

[Currentness](#)

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in [sections 1292\(c\) and \(d\)](#) and [1295](#) of this title.

**CREDIT(S)**

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Apr. 2, 1982, [Pub.L. 97-164, Title I, § 124](#), 96 Stat. 36.)

[Notes of Decisions \(3376\)](#)

28 U.S.C.A. § 1291, 28 USCA § 1291

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated  
Title 28. Judiciary and Judicial Procedure (Refs & Annos)  
Part IV. Jurisdiction and Venue (Refs & Annos)  
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1331

§ 1331. Federal question

Currentness

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

**CREDIT(S)**

(June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, [Pub.L. 94-574, § 2, 90 Stat. 2721](#); Dec. 1, 1980, [Pub.L. 96-486, § 2\(a\), 94 Stat. 2369](#).)

[Notes of Decisions \(3035\)](#)

28 U.S.C.A. § 1331, 28 USCA § 1331

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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United States Code Annotated

Title 43. Public Lands (Refs & Annos)

Chapter 6. Withdrawal from Settlement, Location, Sale or Entry

43 U.S.C.A. § 157

§ 157. Application for withdrawal, reservation, or restriction; specifications

Currentness

Any application filed on and after February 28, 1958 for a withdrawal, reservation, or restriction, the approval of which will, under [section 156](#) of this title, require an Act of Congress, shall specify--

- (1) the name of the requesting agency and intended using agency;
- (2) location of the area involved, to include a detailed description of the exterior boundaries and excepted areas, if any, within such proposed withdrawal, reservation, or restriction;
- (3) gross land and water acreage within the exterior boundaries of the requested withdrawal, reservation, or restriction, and net public land, water, or public land and water acreage covered by the application;
- (4) the purpose or purposes for which the area is proposed to be withdrawn, reserved, or restricted, or if the purpose or purposes are classified for national security reasons, a statement to that effect;
- (5) whether the proposed use will result in contamination of any or all of the requested withdrawal, reservation, or restriction area, and if so, whether such contamination will be permanent or temporary;
- (6) the period during which the proposed withdrawal, reservation, or restriction will continue in effect;
- (7) whether, and if so to what extent, the proposed use will affect continuing full operation of the public land laws and Federal regulations relating to conservation, utilization, and development of mineral resources, timber and other material resources, grazing resources, fish and wildlife resources, water resources, and scenic, wilderness, and recreation and other values; and
- (8) if effecting the purpose for which the area is proposed to be withdrawn, reserved, or restricted, will involve the use of water in any State, whether, subject to existing rights under law, the intended using agency has acquired, or proposes to acquire, rights to the use thereof in conformity with State laws and procedures relating to the control, appropriation, use, and distribution of water.

**CREDIT(S)**

(Pub.L. 85-337, § 3, Feb. 28, 1958, 72 Stat. 28.)

43 U.S.C.A. § 157, 43 USCA § 157

Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

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Chapter I. Bureau of Indian Affairs, Department of the Interior

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Part 83. Procedures for Establishing that an American Indian Group Exists as an Indian Tribe (Refs & Annos)

Subpart A. General Provisions

25 C.F.R. § 83.1

§ 83.1 What terms are used in this part?

Effective: July 31, 2015

Currentness

As used in this part:

ALJ means an administrative law judge in the Departmental Cases Hearings Division, Office of Hearings and Appeals (OHA), Department of the Interior, appointed under [5 U.S.C. 3105](#).

Assistant Secretary or AS-IA means the Assistant Secretary—Indian Affairs within the Department of the Interior, or that officer's authorized representative, but does not include representatives of the Office of Federal Acknowledgment.

Autonomous means independent of the control of any other Indian governing entity.

Bureau means the Bureau of Indian Affairs within the Department of the Interior.

Continental United States means the contiguous 48 states and Alaska.

Department means the Department of the Interior, including the Assistant Secretary and OFA.

Documented petition means the detailed arguments and supporting documentary evidence submitted by a petitioner claiming that it meets the Indian Entity Identification ([§ 83.11\(a\)](#)), Governing Document ([§ 83.11\(d\)](#)), Descent ([§ 83.11\(e\)](#)), Unique Membership ([§ 83.11\(f\)](#)), and Congressional Termination ([§ 83.11\(g\)](#)) Criteria and claiming that it:

- (1) Demonstrates previous Federal acknowledgment under [§ 83.12\(a\)](#) and meets the criteria in [§ 83.12\(b\)](#); or
- (2) Meets the Community ([§ 83.11\(b\)](#)) and Political Authority ([§ 83.11\(c\)](#)) Criteria.

Federally recognized Indian tribe means an entity listed on the Department of the Interior's list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.

Historical means before 1900.

Indigenous means native to the continental United States in that at least part of the petitioner's territory at the time of first sustained contact extended into what is now the continental United States.

Member of a petitioner means an individual who is recognized by the petitioner as meeting its membership criteria and who consents to being listed as a member of the petitioner.

Office of Federal Acknowledgment or OFA means the Office of Federal Acknowledgment within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior.

Petitioner means any entity that has submitted a documented petition to OFA requesting Federal acknowledgment as a federally recognized Indian tribe.

Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Roll means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a roll must have affirmatively demonstrated consent to being listed as members.

Secretary means the Secretary of the Interior within the Department of the Interior or that officer's authorized representative.

Tribe means any Indian tribe, band, nation, pueblo, village or community.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

#### [Notes of Decisions \(142\)](#)

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Subpart A. General Provisions

25 C.F.R. § 83.2

§ 83.2 What is the purpose of the regulations in this part?

Effective: July 31, 2015

[Currentness](#)

The regulations in this part implement Federal statutes for the benefit of Indian tribes by establishing procedures and criteria for the Department to use to determine whether a petitioner is an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A positive determination will result in Federal recognition status and the petitioner's addition to the Department's list of federally recognized Indian tribes. Federal recognition:

- (a) Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian tribes and possess a government-to-government relationship with the United States;
- (b) Means the tribe is entitled to the immunities and privileges available to other federally recognized Indian tribes;
- (c) Means the tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian tribes; and
- (d) Subjects the Indian tribe to the same authority of Congress and the United States as other federally recognized Indian tribes.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart A. General Provisions

25 C.F.R. § 83.3

§ 83.3 Who does this part apply to?

Effective: July 31, 2015

[Currentness](#)

This part applies only to indigenous entities that are not federally recognized Indian tribes.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

[Notes of Decisions \(136\)](#)

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Subpart A. General Provisions

25 C.F.R. § 83.4

§ 83.4 Who cannot be acknowledged under this part?

Effective: July 31, 2015

Currentness

The Department will not acknowledge:

- (a) An association, organization, corporation, or entity of any character formed in recent times unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community;
- (b) A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian tribe, petitioner, or previous petitioner unless the entity can clearly demonstrate it has functioned from 1900 until the present as a politically autonomous community and meets § 83.11(f), even though some have regarded them as part of or associated in some manner with a federally recognized Indian tribe;
- (c) An entity that is, or an entity whose members are, subject to congressional legislation terminating or forbidding the government-to-government relationship; or
- (d) An entity that previously petitioned and was denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title (including reconstituted, splinter, spin-off, or component groups who were once part of previously denied petitioners).

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Subpart A. General Provisions

25 C.F.R. § 83.5

§ 83.5 How does a petitioner obtain Federal acknowledgment under this part?

Effective: July 31, 2015

Currentness

To be acknowledged as a federally recognized Indian tribe under this part, a petitioner must meet the Indian Entity Identification (§ 83.11(a)), Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), and Congressional Termination (§ 83.11(g)) Criteria and must:

(a) Demonstrate previous Federal acknowledgment under § 83.12(a) and meet the criteria in § 83.12(b); or

(b) Meet the Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub.L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Subpart A. General Provisions

25 C.F.R. § 83.6

§ 83.6 What are the Department's duties?

Effective: July 31, 2015

Currentness

(a) The Department will publish in the Federal Register, by January 30 each year, a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians, in accordance with the Federally Recognized Indian Tribe List Act of 1994. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) OFA will maintain guidelines limited to general suggestions on how and where to conduct research. The guidelines may be supplemented or updated as necessary. OFA will also make available examples of portions of documented petitions in the preferred format, though OFA will accept other formats.

(c) OFA will, upon request, give prospective petitioners suggestions and advice on how to prepare the documented petition. OFA will not be responsible for the actual research on behalf of the petitioner.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart A. General Provisions

25 C.F.R. § 83.7

§ 83.7 How does this part apply to documented petitions submitted before August 17, 2015?

Effective: July 31, 2015

Currentness

(a) Any petitioner who has not submitted a complete documented petition as of July 31, 2015 must proceed under these revised regulations. We will notify these petitioners and provide them with a copy of the revised regulations by July 31, 2015.

(b) By August 31, 2015, OFA will notify each petitioner that has submitted complete documented petitions but has not yet received a final agency decision that it must proceed under these revised regulations unless it chooses by September 29, 2015 to complete the petitioning process under the previous version of the acknowledgment regulations as published in 25 CFR part 83, revised as of April 1, 1994.

(c) Any petitioner who has submitted a documented petition under the previous version of the acknowledgment regulations and chooses to proceed under these revised regulations does not need to submit a new documented petition, but may supplement its petition.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart A. General Provisions

25 C.F.R. § 83.8

§ 83.8 May the deadlines in this part be extended?

Effective: July 31, 2015

Currentness

- (a) The AS-IA may extend any of the deadlines in this part upon a finding of good cause.
- (b) For deadlines applicable to the Department, AS-IA may extend the deadlines upon the consent of the petitioner.
- (c) If AS-IA grants a time extension, it will notify the petitioner and those listed in [§ 83.22\(d\)](#).

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart A. General Provisions

25 C.F.R. § 83.9

§ 83.9 How does the Paperwork Reduction Act affect the information collections in this part?

Effective: July 31, 2015

Currentness

The collections of information contained in this part have been approved by the Office of Management and Budget under [44 U.S.C. 3501 et seq.](#) and assigned OMB Control Number 1076–0104. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street, NW., Washington, DC 20240.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart B. Criteria for Federal Acknowledgment

25 C.F.R. § 83.10

§ 83.10 How will the Department evaluate each of the criteria?

Effective: July 31, 2015

Currentness

(a) The Department will consider a criterion in § 83.11 to be met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

(1) The Department will not require conclusive proof of the facts relating to a criterion in order to consider the criterion met.

(2) The Department will require existence of community and political influence or authority be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years will not in themselves be a cause for denial of acknowledgment under these criteria.

(3) The petitioner may use the same evidence to establish more than one criterion.

(4) Evidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner.

(b) When evaluating a petition, the Department will:

(1) Allow criteria to be met by any suitable evidence, rather than requiring the specific forms of evidence stated in the criteria;

(2) Take into account historical situations and time periods for which evidence is demonstrably limited or not available;

(3) Take into account the limitations inherent in demonstrating historical existence of community and political influence or authority;

(4) Require a demonstration that the criteria are met on a substantially continuous basis, meaning without substantial interruption; and

(5) Apply these criteria in context with the history, regional differences, culture, and social organization of the petitioner.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub.L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Subpart B. Criteria for Federal Acknowledgment

25 C.F.R. § 83.11

§ 83.11 What are the criteria for acknowledgment as a federally recognized Indian tribe?

Effective: July 31, 2015

Currentness

The criteria for acknowledgment as a federally recognized Indian tribe are delineated in paragraphs (a) through (g) of this section.

(a) Indian entity identification. The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied will not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification.

- (1) Identification as an Indian entity by Federal authorities.
- (2) Relationships with State governments based on identification of the group as Indian.
- (3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.
- (4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.
- (5) Identification as an Indian entity in newspapers and books.
- (6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.
- (7) Identification as an Indian entity by the petitioner itself.

(b) Community. The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct

community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.

(1) The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time:

(i) Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;

(ii) Social relationships connecting individual members;

(iii) Rates or patterns of informal social interaction that exist broadly among the members of the entity;

(iv) Shared or cooperative labor or other economic activity among members;

(v) Strong patterns of discrimination or other social distinctions by non-members;

(vi) Shared sacred or secular ritual activity;

(vii) Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies;

(viii) The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;

(ix) Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;

(x) Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or

(xi) A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

(2) The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(c) at a given point in time if the evidence demonstrates any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area;

(ii) At least 50 percent of the members of the entity were married to other members of the entity;

(iii) At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies;

(iv) There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2).

(c) Political influence or authority. The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

(1) The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

(i) The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

(ii) Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.

(iv) The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).

(v) There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

(vi) The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.

(vii) Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

(viii) There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

(2) The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:

(i) Entity leaders or other internal mechanisms exist or existed that:

(A) Allocate entity resources such as land, residence rights, and the like on a consistent basis;

(B) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(C) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior; or

(D) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(ii) The petitioner has met the requirements in § 83.11(b)(2) at a given time.

(d) Governing document. The petitioner must provide:

(1) A copy of the entity's present governing document, including its membership criteria; or

(2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

(e) Descent. The petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).



(1) The petitioner satisfies this criterion by demonstrating that the petitioner's members descend from a tribal roll directed by Congress or prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, providing a tribal census, or other purposes, unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate; or

(2) If no tribal roll was directed by Congress or prepared by the Secretary, the petitioner satisfies this criterion by demonstrating descent from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity) with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of a historical Indian tribe (or of historical Indian tribes that combined and functioned as a single autonomous political entity):

(i) Federal, State, or other official records or evidence;

(ii) Church, school, or other similar enrollment records;

(iii) Records created by historians and anthropologists in historical times;

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body with personal knowledge; and

(v) Other records or evidence.

(f) Unique membership. The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, a federally recognized Indian tribe, if the petitioner demonstrates that:

(1) It has functioned as a separate politically autonomous community by satisfying criteria in paragraphs (b) and (c) of this section; and

(2) Its members have provided written confirmation of their membership in the petitioner.

(g) Congressional termination. Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart B. Criteria for Federal Acknowledgment

25 C.F.R. § 83.12

§ 83.12 What are the criteria for a previously federally acknowledged petitioner?

Effective: July 31, 2015

Currentness

(a) The petitioner may prove it was previously acknowledged as a federally recognized Indian tribe, or is a portion that evolved out of a previously federally recognized Indian tribe, by providing substantial evidence of unambiguous Federal acknowledgment, meaning that the United States Government recognized the petitioner as an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians with which the United States carried on a relationship at some prior date including, but not limited to, evidence that the petitioner had:

(1) Treaty relations with the United States;

(2) Been denominated a tribe by act of Congress or Executive Order;

(3) Been treated by the Federal Government as having collective rights in tribal lands or funds; or

(4) Land held for it or its collective ancestors by the United States.

(b) Once the petitioner establishes that it was previously acknowledged, it must demonstrate that it meets:

(1) At present, the Community Criterion; and

(2) Since the time of previous Federal acknowledgment or 1900, whichever is later, the Indian Entity Identification Criterion and Political Authority Criterion.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Documented Petition Submission

25 C.F.R. § 83.20

§ 83.20 How does an entity request Federal acknowledgment?

Effective: July 31, 2015

Currentness

Any entity that believes it can satisfy the criteria in this part may submit a documented petition under this part to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgement, 1951 Constitution Ave. NW., Washington, DC 20240.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Documented Petition Submission

25 C.F.R. § 83.21

§ 83.21 What must a documented petition include?

Effective: July 31, 2015

Currentness

(a) The documented petition may be in any readable form and must include the following:

(1) A certification, signed and dated by the petitioner's governing body, stating that it is the petitioner's official documented petition;

(2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria in § 83.11, except the Congressional Termination Criterion (§ 83.11 (g))—

(i) If the petitioner chooses to provide explanations of and supporting documentation for the Congressional Termination Criterion (§ 83.11 (g)), the Department will accept it; but

(ii) The Department will conduct the research necessary to determine whether the petitioner meets the Congressional Termination Criterion (§ 83.11 (g)).

(3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria in § 83.11;

(4) Membership lists and explanations, including:

(i) An official current membership list, separately certified by the petitioner's governing body, of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address;

(ii) A statement describing the circumstances surrounding the preparation of the current membership list;

(iii) A copy of each available former list of members based on the petitioner's own defined criteria; and

(iv) A statement describing the circumstances surrounding the preparation of the former membership lists, insofar as possible.

(b) If the documented petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner must provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release. The Department will not publicly release information that is protectable under Federal law, but may release redacted information if not protectable under Federal law.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Documented Petition Submission

25 C.F.R. § 83.22

§ 83.22 What notice will OFA provide upon receipt of a documented petition?

Effective: July 31, 2015

Currentness

When OFA receives a documented petition, it will do all of the following:

- (a) Within 30 days of receipt, acknowledge receipt in writing to the petitioner.
- (b) Within 60 days of receipt:
  - (1) Publish notice of receipt of the documented petition in the Federal Register and publish the following on the OFA Web site:
    - (i) The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under § 83.21(b));
    - (ii) The name, location, and mailing address of the petitioner and other information to identify the entity;
    - (iii) The date of receipt;
    - (iv) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the Web site posting; and
    - (v) The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.
  - (2) Notify, in writing, the following:
    - (i) The governor of the State in which the petitioner is located;



(ii) The attorney general of the State in which the petitioner is located;

(iii) The government of the county-level (or equivalent) jurisdiction in which the petitioner is located; and

(iv) Notify any recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) Publish the following additional information to the OFA Web site:

(1) Other portions of the documented petition, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law, as identified by Petitioner under § 83.21(b) or otherwise;

(2) Any comments or materials submitted by third parties to OFA relating to the documented petition;

(3) Any substantive letter, proposed finding, recommended decision, and final determination issued by the Department;

(4) OFA's contact list for each petitioner, including the point of contact for the petitioner; attorneys, and representatives; and

(5) Contact information for any other individuals and entities that request to be kept informed of general actions regarding the petitioner.

(d) All subsequent notices that the Department provides under this part will be provided via the most efficient means for OFA to:

(1) The governor of the State in which the petitioner is located;

(2) The attorney general of the State in which the petitioner is located;

(3) The government of the county-level (or equivalent) jurisdiction in which the petitioner is located;

(4) Any recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination; and

(5) Any individuals and entities that request to be kept informed of general actions regarding a specific petitioner.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Review of Documented Petition

25 C.F.R. § 83.23

§ 83.23 How will OFA determine which documented petition to consider first?

Effective: July 31, 2015

Currentness

(a) OFA will begin reviews of documented petitions in the order of their receipt.

(1) At each successive review stage, there may be points at which OFA is waiting on additional information or clarification from the petitioner. Upon receipt of the additional information or clarification, OFA will return to its review of the documented petition as soon as possible.

(2) To the extent possible, OFA will give highest priority to completing reviews of documented petitions it has already begun to review.

(b) OFA will maintain a numbered register of documented petitions that have been received.

(c) OFA will maintain a numbered register of any letters of intent, which were allowable prior to July 31, 2015, or incomplete (i.e., not fully documented) petitions and the original dates of their filing with the Department. If two or more documented petitions are ready for review on the same date, this register will determine the order of consideration.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.24

§ 83.24 What opportunity will the petitioner have to respond to comments before OFA reviews the petition?

Effective: July 31, 2015

Currentness

Before beginning review of a documented petition, OFA will provide the petitioner with any comments on the petition received from individuals or entities under § 83.22(b) and provide the petitioner with 90 days to respond to such comments. OFA will not begin review until it receives the petitioner's response to the comments or the petitioner requests that OFA proceed without its response.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub.L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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25 C.F.R. § 83.25

§ 83.25 Who will OFA notify when it begins review of a documented petition?

Effective: July 31, 2015

Currentness

OFA will notify the petitioner and those listed in § 83.22(d) when it begins review of a documented petition and will provide the petitioner and those listed in § 83.22(d) with:

- (a) The name, office address, and telephone number of the staff member with primary administrative responsibility for the petition;
- (b) The names of the researchers conducting the evaluation of the petition; and
- (c) The name of their supervisor.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub.L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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25 C.F.R. § 83.26

§ 83.26 How will OFA review a documented petition?

Effective: July 31, 2015

Currentness

(a) Phase I. When reviewing a documented petition, OFA will first determine if the petitioner meets the Governing Document Criterion (§ 83.11(d)), Descent Criterion (§ 83.11(e)), Unique Membership Criterion (§ 83.11(f)), and Termination Criterion (§ 83.11(g)), in accordance with the following steps.

(1)(i) OFA will conduct a Phase I technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting the Governing Document, Descent, Unique Membership, or Termination Criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(A) Withdraws the documented petition to further prepare the petition;

(B) Submits additional information and/or clarification; or

(C) Asks OFA to proceed with the review.

(ii) If the documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the Phase I technical assistance review will include a review to determine whether that evidence meets the requirements of previous Federal acknowledgment (§ 83.12).

(2) Following the receipt of the petitioner's written response to the Phase I technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1)(i) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(4) OFA will publish a positive proposed finding and proceed to Phase II if it determines that the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria.

(b) Phase II. If the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria, OFA will next review whether the petitioner meets the Indian Entity Identification Criterion (§ 83.11(a)), the Community Criterion (§ 83.11(b)), and the Political Influence/Authority Criterion (§ 83.11(c)). If the petitioner claims previous Federal acknowledgment, the Department will also review whether petitioner proves previous Federal acknowledgment and, if so, will review whether the petitioner meets the criteria under § 83.12(b).

(1) OFA will conduct a Phase II technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting these criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(i) Withdraws the documented petition to further prepare the petition;

(ii) Provides additional information and/or clarification; or

(iii) Asks OFA to proceed with the review.

(2) Following receipt of the petitioner's written response to the Phase II technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider in preparing the proposed finding that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will then review the record to determine:

(i) For petitioners with previous Federal acknowledgment, whether the criteria at § 83.12(b) are met; or

(ii) For petitioners without previous Federal acknowledgment, whether the Indian Entity Identification (§ 83.11(a)), Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria are met.

(4) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(5) OFA will publish a positive proposed finding if it determines that the petitioner meets the Indian Entity Identification (§ 83.11(a)), Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria or, for petitioners with previous Federal acknowledgment, that the petitioner meets the criteria at § 83.12(b).

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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25 C.F.R. § 83.27

§ 83.27 What are technical assistance reviews?

Effective: July 31, 2015

[Currentness](#)

Technical assistance reviews are preliminary reviews for OFA to tell the petitioner where there appear to be evidentiary gaps for the criteria that will be under review in that phase and to provide the petitioner with an opportunity to supplement or revise the documented petition.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.28

§ 83.28 When does OFA review for previous Federal acknowledgment?

Effective: July 31, 2015

[Currentness](#)

(a) OFA reviews the documented petition for previous Federal acknowledgment during the Phase II technical assistance review of the documented petition.

(b) If OFA cannot verify previous Federal acknowledgment during this technical assistance review, the petitioner must provide additional evidence. If a petitioner claiming previous Federal acknowledgment does not respond or does not demonstrate the claim of previous Federal acknowledgment, OFA will consider its documented petition on the same basis as documented petitions submitted by petitioners not claiming previous Federal acknowledgment.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.29

§ 83.29 What will OFA consider in its reviews?

Effective: July 31, 2015

Currentness

(a) In any review, OFA will consider the documented petition and evidence submitted by the petitioner, any comments and evidence on the petition received during the comment period, and petitioners' responses to comments and evidence received during the response period.

(b) OFA may also:

(1) Initiate and consider other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(2) Request and consider timely submitted additional explanations and information from commenting parties to support or supplement their comments on the proposed finding and from the petitioner to support or supplement their responses to comments.

(c) OFA must provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with the opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.30

§ 83.30 Can a petitioner withdraw its documented petition?

Effective: July 31, 2015

[Currentness](#)

A petitioner can withdraw its documented petition at any point in the process but the petition will be placed at the end of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.31

§ 83.31 Can OFA suspend review of a documented petition?

Effective: July 31, 2015

Currentness

(a) OFA can suspend review of a documented petition, either conditionally or for a stated period, upon:

(1) A showing to the petitioner that there are technical or administrative problems that temporarily preclude continuing review; and

(2) Approval by the Assistant Secretary.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the documented petition will have the same priority on the numbered register of documented petitions to the extent possible.

(1) OFA will notify the petitioner and those listed in [§ 83.22\(d\)](#) when it suspends and when it resumes review of the documented petition.

(2) Upon the resumption of review, OFA will have the full six months to issue a proposed finding.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Subpart C. Process for Federal Acknowledgment

Proposed Finding

25 C.F.R. § 83.32

§ 83.32 When will OFA issue a proposed finding?

Effective: July 31, 2015

Currentness

(a) OFA will issue a proposed finding as shown in the following table:

| OFA must                                                                                                                                                                                  | within . . .                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| (1) Complete its review under Phase I and either issue a negative proposed finding and publish a notice of availability in the Federal Register, or proceed to review under Phase II..... | six months after notifying the petitioner under § 83.25 that OFA has begun review of the petition. |
| (2) Complete its review under Phase II and issue a proposed finding and publish a notice of availability in the Federal Register.....                                                     | six months after the deadline in paragraph (a)(1) of this section.                                 |

(b) The times set out in paragraph (a) of this section will be suspended any time the Department is waiting for a response or additional information from the petitioner.

(c) OFA will strive to limit the proposed finding and any reports to no more than 100 pages, cumulatively, excluding source documents.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Proposed Finding

25 C.F.R. § 83.33

§ 83.33 What will the proposed finding include?

Effective: July 31, 2015

Currentness

The proposed finding will summarize the evidence, reasoning, and analyses that are the basis for OFA's proposed finding regarding whether the petitioner meets the applicable criteria.

(a) A Phase I negative proposed finding will address that the petitioner fails to meet any one or more of the following criteria: Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), or Congressional Termination (§ 83.11(g)).

(b) A Phase II proposed finding will address whether the petitioner meets the following criteria: Indian Entity Existence (§ 83.11(a)), Community (§ 83.11(b)), and Political Influence/Authority (§ 83.11(c)).

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub.L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Proposed Finding

25 C.F.R. § 83.34

§ 83.34 What notice of the proposed finding will OFA provide?

Effective: July 31, 2015

Currentness

In addition to publishing notice of the proposed finding in the Federal Register, OFA will:

- (a) Provide copies of the proposed finding and any supporting reports to the petitioner and those listed in § 83.22(d); and
- (b) Publish the proposed finding and reports on the OFA Web site.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Comment and Response Periods, Hearing

25 C.F.R. § 83.35

§ 83.35 What opportunity to comment will there be after OFA issues the proposed finding?

Effective: July 31, 2015

Currentness

(a) Publication of notice of the proposed finding will be followed by a 120-day comment period. During this comment period, the petitioner or any individual or entity may submit the following to OFA to rebut or support the proposed finding:

(1) Comments, with citations to and explanations of supporting evidence; and

(2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence must provide the petitioner with a copy of their submission.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Comment and Response Periods, Hearing

25 C.F.R. § 83.36

§ 83.36 What procedure follows the end of the comment period on a favorable proposed finding?

Effective: July 31, 2015

Currentness

(a) At the end of the comment period for a favorable proposed finding, AS-IA will automatically issue a final determination acknowledging the petitioner as a federally recognized Indian tribe if OFA does not receive a timely objection with evidence challenging the proposed finding that the petitioner meets the acknowledgment criteria.

(b) If OFA has received a timely objection and evidence challenging the favorable proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Comment and Response Periods, Hearing

25 C.F.R. § 83.37

§ 83.37 What procedure follows the end of the comment period on a negative proposed finding?

Effective: July 31, 2015

[Currentness](#)

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a–1](#); [Pub.L. 103–454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

Current through July 28, 2016; 81 FR 49813.

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Comment and Response Periods, Hearing

25 C.F.R. § 83.38

§ 83.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

Effective: July 31, 2015

Currentness

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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Comment and Response Periods, Hearing

25 C.F.R. § 83.39

§ 83.39 What is the procedure if the petitioner elects to have a hearing before an ALJ?

Effective: July 31, 2015

Currentness

(a) If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and responses sent in response to the proposed finding.

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 83.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) Hearing process. The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) Hearing record. The hearing will be on the record before an ALJ. The hearing record will become part of the record considered by AS-IA in reaching a final determination.

(d) Recommended decision. The ALJ will issue a recommended decision and forward it along with the hearing record to the AS-IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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as-IA Evaluation and Preparation of Final Determination

25 C.F.R. § 83.40

§ 83.40 When will the Assistant Secretary begin review?

Effective: July 31, 2015

Currentness

(a) AS-IA will begin his/her review in accordance with the following table:

| If the PF was: | And:                                      | AS-IA will begin review upon:                                                          |
|----------------|-------------------------------------------|----------------------------------------------------------------------------------------|
| (1) Negative   | The petitioner did not elect a hearing    | Expiration of the period for the petitioner to elect a hearing.                        |
| (2) Negative   | The petitioner elected a hearing          | Receipt of the ALJ's recommended decision.                                             |
| (3) Positive   | No objections with evidence were received | Expiration of the comment period for the positive PF.                                  |
| (4) Positive   | Objections with evidence were received    | Expiration of the period for the petitioner to respond to comments on the positive PF. |

(b) AS-IA will notify the petitioner and those listed in § 83.22(d) of the date he/she begins consideration.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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as-IA Evaluation and Preparation of Final Determination

25 C.F.R. § 83.41

§ 83.41 What will the Assistant Secretary consider in his/her review?

Effective: July 31, 2015

Currentness

(a) AS-IA will consider all the evidence in the administrative record, including any comments and responses on the proposed finding and any the hearing transcript and recommended decision.

(b) AS-IA will not consider comments submitted after the close of the comment period in § 83.35, the response period in § 83.36 or § 83.37, or the hearing election period in § 83.38.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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as-IA Evaluation and Preparation of Final Determination

25 C.F.R. § 83.42

§ 83.42 When will the Assistant Secretary issue a final determination?

Effective: July 31, 2015

[Currentness](#)

(a) AS-IA will issue a final determination and publish a notice of availability in the Federal Register within 90 days from the date on which he/she begins its review. AS-IA will also

(1) Provide copies of the final determination to the petitioner and those listed in [§ 83.22\(d\)](#); and

(2) Make copies of the final determination available to others upon written request.

(b) AS-IA will strive to limit the final determination and any reports to no more than 100 pages, cumulatively, excluding source documents.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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as-IA Evaluation and Preparation of Final Determination

25 C.F.R. § 83.43

§ 83.43 How will the Assistant Secretary make the determination decision?

Effective: July 31, 2015

Currentness

(a) AS-IA will issue a final determination granting acknowledgment as a federally recognized Indian tribe when AS-IA finds that the petitioner meets the Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), and Congressional Termination (§ 83.11(g)) Criteria and:

(1) Demonstrates previous Federal acknowledgment under § 83.12(a) and meets the criteria in § 83.12(b); or

(2) Meets the Indian Entity Identification (§ 83.11(a)), Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria.

(b) AS-IA will issue a final determination declining acknowledgement as a federally recognized Indian tribe when he/she finds that the petitioner:

(1) In Phase I, does not meet the Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), or Congressional Termination (§ 83.11(g)) Criteria: or

(2) In Phase II, does not:

(i) Demonstrate previous Federal acknowledgment under § 83.12(a) and meet the criteria in § 83.12(b); or

(ii) Meet the Indian Entity Identification (§ 83.11(a)), Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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25 C.F.R. § 83.44

§ 83.44 Is the Assistant Secretary's final determination final for the Department?

Effective: July 31, 2015

Currentness

Yes. The AS-IA's final determination is final for the Department and is a final agency action under the Administrative Procedure Act ([5 U.S.C. 704](#)).

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.45

§ 83.45 When will the final determination be effective?

Effective: July 31, 2015

[Currentness](#)

The final determination will become immediately effective. Within 10 business days of the decision, the Assistant Secretary will submit to the Federal Register a notice of the final determination to be published in the Federal Register.

SOURCE: [80 FR 37888](#), July 1, 2015, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301](#); [25 U.S.C. 2, 9, 479a-1](#); [Pub.L. 103-454](#) Sec. 103 (Nov. 2, 1994); and [43 U.S.C. 1457](#).

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25 C.F.R. § 83.46

§ 83.46 How is a petitioner with a positive final determination  
integrated into Federal programs as a federally recognized Indian tribe?

Effective: July 31, 2015

Currentness

(a) Upon acknowledgment, the petitioner will be a federally recognized Indian tribe entitled to the privileges and immunities available to federally recognized Indian tribes. It will be included on the list of federally recognized Indian tribes in the next scheduled publication.

(b) Within six months after acknowledgment, the appropriate Bureau of Indian Affairs Regional Office will consult with the newly federally recognized Indian tribe and develop, in cooperation with the federally recognized Indian tribe, a determination of needs and a recommended budget. These will be forwarded to the Assistant Secretary. The recommended budget will then be considered with other recommendations by the Assistant Secretary in the usual budget request process.

(c) While the newly federally acknowledged Indian tribe is eligible for benefits and services available to federally recognized Indian tribes, acknowledgment as a federally recognized Indian tribe does not create immediate access to existing programs. The newly federally acknowledged Indian tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations will follow a determination of the needs of the newly federally acknowledged Indian tribe.

SOURCE: 80 FR 37888, July 1, 2015, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a-1; Pub.L. 103-454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

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Unconstitutional or Preempted Prior Version Held Invalid [Akiachak Native Community v. Salazar](#), D.D.C., Mar. 31, 2013[Code of Federal Regulations](#)[Title 25. Indians](#)[Chapter I. Bureau of Indian Affairs, Department of the Interior](#)[Subchapter H. Land and Water](#)[Part 151. Land Acquisitions \(Refs & Annos\)](#)

## 25 C.F.R. § 151.1

## § 151.1 Purpose and scope.

Effective: January 22, 2015

[Currentness](#)

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations.

**Credits**[[79 FR 76897](#), Dec. 23, 2014]

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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Subchapter H. Land and Water

Part 151. Land Acquisitions (Refs & Annos)

25 C.F.R. § 151.2

§ 151.2 Definitions.

Currentness

- (a) Secretary means the Secretary of the Interior or authorized representative.
- (b) Tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of [25 U.S.C. 488](#) and [489](#), or other statutory authority which specifically authorizes trust acquisitions for such corporations, “Tribe” also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; [25 U.S.C. 477](#)) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; [25 U.S.C. 503](#)).
- (c) Individual Indian means:
- (1) Any person who is an enrolled member of a tribe;
  - (2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;
  - (3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;
  - (4) For purposes of acquisitions outside of the State of Alaska, Individual Indian also means a person who meets the qualifications of paragraph (c)(1), (2), or (3) of this section where “Tribe” includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.
- (d) Trust land or land in trust status means land the title to which is held in trust by the United States for an individual Indian or a tribe.
- (e) Restricted land or land in restricted status means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, Indian reservation means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) Land means real property or any interest therein.

(h) Tribal consolidation area means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

#### Credits

[[45 FR 62036](#), Sept. 18, 1980, as amended at [60 FR 32879](#), June 23, 1995]

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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Subchapter H. Land and Water

Part 151. Land Acquisitions (Refs & Annos)

25 C.F.R. § 151.3

§ 151.3 Land acquisition policy.

Currentness

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status:

- (1) When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or
- (2) When the land is already in trust or restricted status.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88

Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

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25 C.F.R. § 151.4

§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.

Currentness

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161; [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495](#), and other authorizing acts.

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25 C.F.R. § 151.5

§ 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.

Currentness

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the Act of June 18, 1934 (48 Stat. 985; [25 U.S.C. 465](#)), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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25 C.F.R. § 151.6

§ 151.6 Exchanges.

Currentness

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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25 C.F.R. § 151.7

§ 151.7 Acquisition of fractional interests.

Currentness

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

- (a) The buyer already owns a fractional interest in the same parcel of land; or
- (b) The interest being acquired by the buyer is in fee status; or
- (c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or
- (d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or
- (e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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25 C.F.R. § 151.8

§ 151.8 Tribal consent for nonmember acquisitions.

Currentness

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

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25 C.F.R. § 151.9

§ 151.9 Requests for approval of acquisitions.

Currentness

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

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25 C.F.R. § 151.10

§ 151.10 On-reservation acquisitions.

Currentness

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise; and
- (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

## Credits

[[45 FR 62036](#), Sept. 18, 1980, as amended at [60 FR 32879](#), June 23, 1995]

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d–10](#), [1466](#), [1495](#), and other authorizing acts.

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25 C.F.R. § 151.11

§ 151.11 Off-reservation acquisitions.

Currentness

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

- (a) The criteria listed in § 151.10(a) through (c) and (e) through (h);
- (b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.
- (c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.
- (d) Contact with state and local governments pursuant to § 151.10(e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

**Credits**

[60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995]

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88

§ 151.11 Off-reservation acquisitions., 25 C.F.R. § 151.11  
Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

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25 C.F.R. § 151.12

§ 151.12 Action on requests.

Effective: December 13, 2013

Currentness

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under [5 U.S.C. 704](#) upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the Federal Register a notice of the decision to acquire land in trust under this part; and

(iii) Immediately acquire the land in trust under [§ 151.14](#) on or after the date such decision is issued and upon fulfillment of the requirements of [§ 151.13](#) and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under [5 U.S.C. 704](#) until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official shall:

- (i) Promptly provide the applicant with the decision;
  - (ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:
    - (A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and
    - (B) The State and local governments having regulatory jurisdiction over the land to be acquired;
  - (iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and
  - (iv) Immediately acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.
- (3) The administrative appeal period under part 2 of this chapter begins on:
- (i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;
  - (ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.
- (4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR part 2.

#### Credits

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995, as amended at 61 FR 18083, April 24, 1996; 78 FR 67937, Nov. 13, 2013]

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84

Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

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25 C.F.R. § 151.13

§ 151.13 Title review.

Effective: May 16, 2016

Currentness

(a) If the Secretary determines that she will approve a request for the acquisition of land from unrestricted fee status to trust status, she shall require the applicant to furnish title evidence as follows:

(1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor, that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

(2) Either:

(i) A current title insurance commitment; or

(ii) The policy of title insurance issued to the applicant or current owner and an abstract of title dating from the time the policy of title insurance was issued to the applicant or current owner to the present.

(3) The applicant may choose to provide title evidence meeting the title standards issued by the U.S. Department of Justice, in lieu of the evidence required by paragraph (a)(2) of this section.

(b) After reviewing submitted title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition, and she shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable.

**Credits**

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995; 81 FR 10479, March 1, 2016; 81 FR 22183, April 15, 2016; 81 FR 30177, May 16, 2016]

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161; [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

#### [Notes of Decisions \(143\)](#)

Current through July 28, 2016; 81 FR 49813.

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Code of Federal Regulations

Title 25. Indians

Chapter I. Bureau of Indian Affairs, Department of the Interior

Subchapter H. Land and Water

Part 151. Land Acquisitions (Refs & Annos)

25 C.F.R. § 151.14

§ 151.14 Formalization of acceptance.

Currentness

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

Credits

[[45 FR 62036](#), Sept. 18, 1980. Redesignated at [60 FR 32879](#), June 23, 1995]

SOURCE: [45 FR 62036](#), Sept. 18, 1980, unless otherwise noted. Redesignated at [47 FR 13327](#), March 30, 1982; [66 FR 3458](#), Jan. 16, 2001; [66 FR 8899](#), Feb. 5, 2001; [66 FR 10816](#), Feb. 20, 2001; [66 FR 31976](#), June 13, 2001, [66 FR 42415](#), Aug. 13, 2001; [66 FR 56608](#), Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: [5 U.S.C. 301](#). Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; [25 U.S.C. 2](#), [9](#), [409a](#), [450h](#), [451](#), [464](#), [465](#), [487](#), [488](#), [489](#), [501](#), [502](#), [573](#), [574](#), [576](#), [608](#), [608a](#), [610](#), [610a](#), [622](#), [624](#), [640d-10](#), [1466](#), [1495](#), and other authorizing acts.

Notes of Decisions ([145](#))

Current through July 28, 2016; 81 FR 49813.

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Code of Federal Regulations

Title 25. Indians

Chapter I. Bureau of Indian Affairs, Department of the Interior

Subchapter H. Land and Water

Part 151. Land Acquisitions (Refs & Annos)

25 C.F.R. § 151.15

§ 151.15 Information collection.

Currentness

(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

Credits

[60 FR 32879, June 23, 1995; 64 FR 13895, March 23, 1999]

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

Notes of Decisions (143)

Current through July 28, 2016; 81 FR 49813.

42 Fed. Reg. 53682  
Notices  
DEPARTMENT OF THE INTERIOR

ESTABLISHMENT OF ASSISTANT SECRETARY--INDIAN AFFAIRS

October 3, 1977

Sec. 1 *Purpose.* This order provides for the establishment of the position of Assistant Secretary--Indian Affairs in the Secretariat of the Department of the Interior. This action is being taken in accordance with the authority provided by 43 U.S.C. 1453 and 1454, and Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).



42 FR 53682

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81 FR 26826-02, 2016 WL 1749523(F.R.)  
NOTICES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
[167 A2100DD/AAK001030/AoA501010.999900]

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Wednesday, May 4, 2016

AGENCY: Bureau of Indian Affairs, Interior.

**\*26826** ACTION: Notice.

SUMMARY: This notice publishes the current list of 567 Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes. The list is updated from the notice published on January 29, 2016 ([81 FR 5019](#)).

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513-MIB, 1849 C Street NW., Washington, DC 20240. Telephone number: (202) 513-7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 ([Pub. L. 103-454](#); 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under [25 U.S.C. 2](#) and [9](#) and 209 DM 8.

**\*26827** Published below is an updated list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska, to reflect the addition of an Indian Tribe and various name changes and corrections.

The addition to the list of Indian entities results from the January 28, 2016, Interior Board of Indian Appeals dismissal of a request for reconsideration in docket number 16-003, In Re Federal Acknowledgment of the Pamunkey Indian Tribe.

To aid in identifying Tribal name changes and corrections, the Tribe's previously listed or former name is included in parentheses after the correct current Tribal name. We will continue to list the Tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: April 25, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

**INDIAN TRIBAL ENTITIES WITHIN THE CONTIGUOUS 48 STATES RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS**

Absentee-Shawnee Tribe of Indians of Oklahoma

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California

Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)

Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)

Alabama-Quassarte Tribal Town

Alturas Indian Rancheria, California

Apache Tribe of Oklahoma

Arapaho Tribe of the Wind River Reservation, Wyoming

Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana

Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)

Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin

Bay Mills Indian Community, Michigan

Bear River Band of the Rohnerville Rancheria, California

Berry Creek Rancheria of Maidu Indians of California

Big Lagoon Rancheria, California

Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)

Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)

Big Valley Band of Pomo Indians of the Big Valley Rancheria, California

Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)

Blackfeet Tribe of the Blackfeet Indian Reservation of Montana

Blue Lake Rancheria, California

Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)

Buena Vista Rancheria of Me-Wuk Indians of California

Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)

Cabazon Band of Mission Indians, California

Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California

Caddo Nation of Oklahoma

Cahto Tribe of the Laytonville Rancheria

Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)

California Valley Miwok Tribe, California

Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California

Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)

Catawba Indian Nation (aka Catawba Tribe of South Carolina)

Cayuga Nation

Cedarville Rancheria, California

Chemehuevi Indian Tribe of the Chemehuevi Reservation, California

Cher-Ae Heights Indian Community of the Trinidad Rancheria, California

Cherokee Nation

Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)

Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota

Chicken Ranch Rancheria of Me-Wuk Indians of California

Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)

Chitimacha Tribe of Louisiana

Citizen Potawatomi Nation, Oklahoma

Cloverdale Rancheria of Pomo Indians of California

Cocopah Tribe of Arizona

Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)

Cold Springs Rancheria of Mono Indians of California

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California



Comanche Nation, Oklahoma

Confederated Salish and Kootenai Tribes of the Flathead Reservation

Confederated Tribes and Bands of the Yakama Nation

Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)

Confederated Tribes of the Chehalis Reservation

Confederated Tribes of the Colville Reservation

Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians

Confederated Tribes of the Goshute Reservation, Nevada and Utah

Confederated Tribes of the Grand Ronde Community of Oregon

Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)

Confederated Tribes of the Warm Springs Reservation of Oregon

Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)

Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California)

Coushatta Tribe of Louisiana

Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)

Cowlitz Indian Tribe

Coyote Valley Band of Pomo Indians of California

Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota

**\*26828** Crow Tribe of Montana

Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)

Delaware Nation, Oklahoma

Delaware Tribe of Indians

Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)

Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

Eastern Band of Cherokee Indians

Eastern Shawnee Tribe of Oklahoma

Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)

Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California

Elk Valley Rancheria, California

Ely Shoshone Tribe of Nevada

Enterprise Rancheria of Maidu Indians of California

Ewiaapaayp Band of Kumeyaay Indians, California

Federated Indians of Graton Rancheria, California

Flandreau Santee Sioux Tribe of South Dakota

Forest County Potawatomi Community, Wisconsin

Fort Belknap Indian Community of the Fort Belknap Reservation of Montana

Fort Bidwell Indian Community of the Fort Bidwell Reservation of California

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon

Fort McDowell Yavapai Nation, Arizona

Fort Mojave Indian Tribe of Arizona, California & Nevada

Fort Sill Apache Tribe of Oklahoma

Gila River Indian Community of the Gila River Indian Reservation, Arizona

Grand Traverse Band of Ottawa and Chippewa Indians, Michigan

Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)

Grindstone Indian Rancheria of Wintun-Wailaki Indians of California

Guidiville Rancheria of California

Habematoel Pomo of Upper Lake, California

Hannahville Indian Community, Michigan

Havasupai Tribe of the Havasupai Reservation, Arizona

Ho-Chunk Nation of Wisconsin

Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)

Hoopa Valley Tribe, California

Hopi Tribe of Arizona

Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)

Houlton Band of Maliseet Indians

Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona

Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)

Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California

Ione Band of Miwok Indians of California

Iowa Tribe of Kansas and Nebraska

Iowa Tribe of Oklahoma

Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)

Jamestown S'Klallam Tribe

Jamul Indian Village of California

Jena Band of Choctaw Indians

Jicarilla Apache Nation, New Mexico

Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona

Kalispel Indian Community of the Kalispel Reservation

Karuk Tribe (previously listed as the Karuk Tribe of California)

Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California

Kaw Nation, Oklahoma

Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)

Keweenaw Bay Indian Community, Michigan

Kialegee Tribal Town

Kickapoo Traditional Tribe of Texas

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas

Kickapoo Tribe of Oklahoma

Kiowa Indian Tribe of Oklahoma

Klamath Tribes

Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California)

Kootenai Tribe of Idaho

La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)

La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin

Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin

Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan

Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada

Little River Band of Ottawa Indians, Michigan

Little Traverse Bay Bands of Odawa Indians, Michigan

Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)

Los Coyotes Band of Cahuilla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)

Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada

Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota

Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)

Lower Sioux Indian Community in the State of Minnesota

Lummi Tribe of the Lummi Reservation

Lytton Rancheria of California

Makah Indian Tribe of the Makah Indian Reservation

Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)

Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California

Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)

Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.)

Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan

Mechoopda Indian Tribe of Chico Rancheria, California

Menominee Indian Tribe of Wisconsin

Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

Mescalero Apache Tribe of the Mescalero Reservation, New Mexico

Miami Tribe of Oklahoma

Miccosukee Tribe of Indians

Middletown Rancheria of Pomo Indians of California

Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)

Mississippi Band of Choctaw Indians

Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada

**\*26829** Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut)

Mooretown Rancheria of Maidu Indians of California

Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)

Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)

Narragansett Indian Tribe

Navajo Nation, Arizona, New Mexico & Utah

Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho)

Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)

Nooksack Indian Tribe

Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

Northfork Rancheria of Mono Indians of California

Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie))

Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)

Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)

Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)

Omaha Tribe of Nebraska

Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)

Oneida Nation of New York

Onondaga Nation

Otoe-Missouria Tribe of Indians, Oklahoma

Ottawa Tribe of Oklahoma

Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))

Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada

Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California)

Pamunkey Indian Tribe

Pascua Yaqui Tribe of Arizona

Paskenta Band of Nomlaki Indians of California

Passamaquoddy Tribe

Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California

Pawnee Nation of Oklahoma

Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California

Penobscot Nation (previously listed as the Penobscot Tribe of Maine)

Peoria Tribe of Indians of Oklahoma

Picayune Rancheria of Chukchansi Indians of California

Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California)

Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)

Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Ponca Tribe of Indians of Oklahoma

Ponca Tribe of Nebraska

Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)

Potter Valley Tribe, California

Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)

Prairie Island Indian Community in the State of Minnesota

Pueblo of Acoma, New Mexico

Pueblo of Cochiti, New Mexico

Pueblo of Isleta, New Mexico

Pueblo of Jemez, New Mexico

Pueblo of Laguna, New Mexico

Pueblo of Nambe, New Mexico

Pueblo of Picuris, New Mexico

Pueblo of Pojoaque, New Mexico

Pueblo of San Felipe, New Mexico

Pueblo of San Ildefonso, New Mexico

Pueblo of Sandia, New Mexico

Pueblo of Santa Ana, New Mexico

Pueblo of Santa Clara, New Mexico

Pueblo of Taos, New Mexico

Pueblo of Tesuque, New Mexico

Pueblo of Zia, New Mexico

Puyallup Tribe of the Puyallup Reservation

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada

Quartz Valley Indian Community of the Quartz Valley Reservation of California

Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona

Quileute Tribe of the Quileute Reservation

Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)

Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)

Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin

Red Lake Band of Chippewa Indians, Minnesota

Redding Rancheria, California

Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)

Reno-Sparks Indian Colony, Nevada

Resighini Rancheria, California

Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota

Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)

Sac & Fox Nation of Missouri in Kansas and Nebraska

Sac & Fox Nation, Oklahoma

Sac & Fox Tribe of the Mississippi in Iowa

Saginaw Chippewa Indian Tribe of Michigan

Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona

Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)

San Carlos Apache Tribe of the San Carlos Reservation, Arizona

San Juan Southern Paiute Tribe of Arizona

San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)

San Pasqual Band of Diegueno Mission Indians of California

Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)

Santa Rosa Indian Community of the Santa Rosa Rancheria, California

Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California

Santee Sioux Nation, Nebraska

Sauk-Suiattle Indian Tribe

Sault Ste. Marie Tribe of Chippewa Indians, Michigan

**\*26830** Scotts Valley Band of Pomo Indians of California

Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))

Seneca Nation of Indians (previously listed as the Seneca Nation of New York)



Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)

Shakopee Mdewakanton Sioux Community of Minnesota

Shawnee Tribe

Sherwood Valley Rancheria of Pomo Indians of California

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California

Shinnecock Indian Nation

Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)

Shoshone-Bannock Tribes of the Fort Hall Reservation

Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota

Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)

Skull Valley Band of Goshute Indians of Utah

Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)

Soboba Band of Luiseno Indians, California

Sokaogon Chippewa Community, Wisconsin

Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado

Spirit Lake Tribe, North Dakota

Spokane Tribe of the Spokane Reservation

Squaxin Island Tribe of the Squaxin Island Reservation

St. Croix Chippewa Indians of Wisconsin

Standing Rock Sioux Tribe of North & South Dakota

Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)

Stockbridge Munsee Community, Wisconsin

Summit Lake Paiute Tribe of Nevada

Suquamish Indian Tribe of the Port Madison Reservation

Susanville Indian Rancheria, California

Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)

Sycuan Band of the Kumeyaay Nation

Table Mountain Rancheria of California

Tejon Indian Tribe

Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)

The Chickasaw Nation

The Choctaw Nation of Oklahoma

The Modoc Tribe of Oklahoma

The Muscogee (Creek) Nation

The Osage Nation (previously listed as the Osage Tribe)

The Quapaw Tribe of Indians

The Seminole Nation of Oklahoma

Thlopthlocco Tribal Town

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Tohono O'odham Nation of Arizona

Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)

Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)

Tonkawa Tribe of Indians of Oklahoma

Tonto Apache Tribe of Arizona

Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)

Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)

Tule River Indian Tribe of the Tule River Reservation, California

Tunica-Biloxi Indian Tribe

Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California

Turtle Mountain Band of Chippewa Indians of North Dakota

Tuscarora Nation

Twenty-Nine Palms Band of Mission Indians of California

United Auburn Indian Community of the Auburn Rancheria of California

United Keetoowah Band of Cherokee Indians in Oklahoma

Upper Sioux Community, Minnesota

Upper Skagit Indian Tribe

Ute Indian Tribe of the Uintah & Ouray Reservation, Utah

Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)

Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California

Walker River Paiute Tribe of the Walker River Reservation, Nevada

Wampanoag Tribe of Gay Head (Aquinnah)

Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)

White Mountain Apache Tribe of the Fort Apache Reservation, Arizona

Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma

Wilton Rancheria, California

Winnebago Tribe of Nebraska

Winnemucca Indian Colony of Nevada

Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)

Wyandotte Nation

Yankton Sioux Tribe of South Dakota

Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona

Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)

Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada

Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)

Yomba Shoshone Tribe of the Yomba Reservation, Nevada

Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)

Yurok Tribe of the Yurok Reservation, California

Zuni Tribe of the Zuni Reservation, New Mexico

**NATIVE ENTITIES WITHIN THE STATE OF ALASKA RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS**

Agdaagux Tribe of King Cove

Akiachak Native Community

Akiak Native Community

Alatna Village

Algaaciq Native Village (St. Mary's)

Allakaket Village

Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)

Angoon Community Association

Anvik Village

Arctic Village (See Native Village of Venetie Tribal Government)

Asa'carsarmiut Tribe

Atqasuk Village (Atkasook)

Beaver Village

Birch Creek Tribe

Central Council of the Tlingit & Haida Indian Tribes

Chalkyitsik Village

Ceesh-Na Tribe (previously listed as the Native Village of Chistochina)

Chevak Native Village

Chickaloon Native Village

Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)

Chignik Lake Village

Chilkat Indian Village (Klukwan)

Chilkoot Indian Association (Haines)

Chinik Eskimo Community (Golovin)

Chuloonawick Native Village

**\*26831** Circle Native Community

Craig Tribal Association (previously listed as the Craig Community Association)

Curyung Tribal Council

Douglas Indian Association

Egegik Village

Eklutna Native Village

Emmonak Village

Evansville Village (aka Bettles Field)

Galena Village (aka Loudon Village)

Gulkana Village

Healy Lake Village

Holy Cross Village

Hoonah Indian Association

Hughes Village

Huslia Village

Hydaburg Cooperative Association

Igiugig Village

Inupiat Community of the Arctic Slope

Iqurmuut Traditional Council

Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)

Kaguyak Village

Kaktovik Village (aka Barter Island)

Kasigluk Traditional Elders Council

Kenaitze Indian Tribe

Ketchikan Indian Corporation

King Island Native Community

King Salmon Tribe

Klawock Cooperative Association

Knik Tribe

Kokhanok Village

Koyukuk Native Village

Levelock Village

Lime Village

Manley Hot Springs Village

Manokotak Village

McGrath Native Village

Mentasta Traditional Council

Metlakatla Indian Community, Annette Island Reserve

Naknek Native Village

Native Village of Afognak

Native Village of Akhiok

Native Village of Akutan

Native Village of Aleknagik

Native Village of Ambler

Native Village of Atka

Native Village of Barrow Inupiat Traditional Government

Native Village of Belkofski

Native Village of Brevig Mission

Native Village of Buckland

Native Village of Cantwell

Native Village of Chenega (aka Chanega)

Native Village of Chignik Lagoon

Native Village of Chitina

Native Village of Chuathbaluk (Russian Mission, Kuskokwim)

Native Village of Council

Native Village of Deering

Native Village of Diomedes (aka Inalik)

Native Village of Eagle

Native Village of Eek

Native Village of Ekuk

Native Village of Ekwok (previously listed as Ekwok Village)

Native Village of Elim

Native Village of Eyak (Cordova)

Native Village of False Pass

Native Village of Fort Yukon

Native Village of Gakona

Native Village of Gambell

Native Village of Georgetown

Native Village of Goodnews Bay

Native Village of Hamilton

Native Village of Hooper Bay

Native Village of Kanatak

Native Village of Karluk

Native Village of Kiana

Native Village of Kipnuk

Native Village of Kivalina

Native Village of Kluti Kaah (aka Copper Center)

Native Village of Kobuk

Native Village of Kongiganak

Native Village of Kotzebue

Native Village of Koyuk

Native Village of Kwigillingok

Native Village of Kwinhagak (aka Quinhagak)

Native Village of Larsen Bay

Native Village of Marshall (aka Fortuna Ledge)

Native Village of Mary's Igloo

Native Village of Mekoryuk

Native Village of Minto

Native Village of Nanwalek (aka English Bay)

Native Village of Napaimute

Native Village of Napakiak

Native Village of Napaskiak

Native Village of Nelson Lagoon

Native Village of Nightmute

Native Village of Nikolski

Native Village of Noatak

Native Village of Nuiqsut (aka Nooiksut)

Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)

Native Village of Nunapitchuk

Native Village of Ouzinkie

Native Village of Paimiut

Native Village of Perryville

Native Village of Pilot Point

Native Village of Pitka's Point

Native Village of Point Hope

Native Village of Point Lay

Native Village of Port Graham

Native Village of Port Heiden

Native Village of Port Lions

Native Village of Ruby

Native Village of Saint Michael

Native Village of Savoonga

Native Village of Scammon Bay

Native Village of Selawik

Native Village of Shaktoolik



Native Village of Shishmaref

Native Village of Shungnak

Native Village of Stevens

Native Village of Tanacross

Native Village of Tanana

Native Village of Tatitlek

Native Village of Tazlina

Native Village of Teller

Native Village of Tetlin

Native Village of Tuntutuliak

Native Village of Tununak

Native Village of Tyonek

Native Village of Unalakleet

Native Village of Unga

Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)

Native Village of Wales

Native Village of White Mountain

Nenana Native Association

New Koliganek Village Council

New Stuyahok Village

Newhalen Village

Newtok Village

Nikolai Village

Ninilchik Village

Nome Eskimo Community

Nondalton Village

Noorvik Native Community

Northway Village

Nulato Village

Nunakauyarmiut Tribe

Organized Village of Grayling (aka Holikachuk)

Organized Village of Kake

Organized Village of Kasaan

Organized Village of Kwethluk

Organized Village of Saxman

Orutsararmiut Traditional Native Council (previously listed as Orutsararmuit Native Village (aka Bethel))

Oscarville Traditional Village

Pauloff Harbor Village

Pedro Bay Village

Petersburg Indian Association

Pilot Station Traditional Village

Platinum Traditional Village

Portage Creek Village (aka Ohgsenakale)

Pribilof Islands Aleut Communities of St. Paul & St. George Islands

Qagan Tayagungin Tribe of Sand Point Village

Qawalangin Tribe of Unalaska

Rampart Village

Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)

Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)

Seldovia Village Tribe

Shageluk Native Village

Sitka Tribe of Alaska

Skagway Village

South Naknek Village

Stebbins Community Association

Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)

Takotna Village

Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))

Telida Village

Traditional Village of Togiak

Tuluksak Native Community

Twin Hills Village

Ugashik Village

**\*26832** Umkumiut Native Village (previously listed as Umkumiute Native Village)

Village of Alakanuk

Village of Anaktuvuk Pass

Village of Aniak

Village of Atmautluak

Village of Bill Moore's Slough

Village of Cheformak

Village of Clarks Point

Village of Crooked Creek

Village of Dot Lake

Village of Iliamna

Village of Kalskag

Village of Kaltag

Village of Kotlik

Village of Lower Kalskag

Village of Ohogamiut

Village of Red Devil

Village of Salamatoff

Village of Sleetmute

Village of Solomon

Village of Stony River

Village of Venetie (See Native Village of Venetie Tribal Government)

Village of Wainwright

Wrangell Cooperative Association

Yakutat Tlingit Tribe

Yupiit of Andreafski

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