No. 17-35368

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK'S LANDING INDIAN COMMUNITY, a federally recognized Indian Tribe,

Plaintiff/Appellant,

v.

NATIONAL INDIAN GAMING COMMISSION; JONODEV CHAUDHURI, in his official capacity as Chairman of the National Indian Gaming Commission; UNITED STATES DEPARTMENT OF THE INTERIOR; MICHAEL BLACK, in his official capacity as Acting Assistant Secretary of the Interior-Indian Affairs, RYAN K. ZINKE, in his official capacity as the Secretary of the Interior,

Defendants/Appellees.

Appeal From a Decision of the United States District Court for the Western District Of Washington, No.: 3:15-cv-05828-BHS – Honorable Benjamin H. Settle

APPELLANT FRANK'S LANDING INDIAN COMMUNITY OPENING BRIEF

Scott Crowell
Crowell Law Office-Tribal Advocacy Group
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5107
Email: scottcrowell@hotmail.com

Bryan T. Newland
Fletcher Law, PLLC
909 Abbott Road, Suite F
East Lansing, MI 48823
Tel: (517) 862-5570
Email: bnewland@fletcherlawpllc.com

Alan S. Middleton
Law Offices of Alan S. Middleton, PLLC
18550 43rd Ave, NE
Lake Forest Park, WA 98155
Tel: (206) 533-0490
Email: alanscottmiddleton@comcast.net

Attorneys for Appellant

CORPORATE DISCLOSURE STATEMENT

Required by Rule 26.1 of Federal Rules of Appellate Procedure the undersigned, counsel of record for Appellant Franks Landing Indian Community hereby certify that neither the Appellant, nor any parent company, subsidiary, or affiliate thereof has issued any shares of capital stock to the pubic.

Dated: August 10, 2017

s/ Scott D. Crowell
SCOTT CROWELL
(WSBA No. 18868)
CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com

Attorney for Appellant

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PRELIMINARY STATEMENT

This case presents a straightforward question of statutory interpretation: is the Frank's Landing Indian Community an "Indian tribe" under the Indian Gaming Regulatory Act's, 25 U.S.C. 2701 *et seq*., ("IGRA's") (Add. at 18) definition of that term?

In 1994, Congress recognized the Frank's Landing Indian Community (the "Community") as a "self-governing dependent Indian community" that is "eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Congress enacted IGRA six years earlier, which defines the term "Indian tribe" to mean an Indian tribe or community that "possesses powers of self-government" and that is also "eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

For the Community, the answer to the question at issue has been obvious from the beginning: since it is a "self-governing depending Indian community" that Congress has recognized as "eligible for the special programs and services provided by the United States to Indians because of their status as Indians," the Community satisfies IGRA's definition of the term "Indian tribe."

But, on March 6, 2015, the Appellees issued a final decision (ER Vol. II/212) finding that, since the Community did not constitute an "Indian tribe" under

a completely separate and unrelated statutory definition of that term, the Community could not qualify as an "Indian tribe" under IGRA's definition. *See* Add. at 19. The District Court upheld the Appellees' decision, finding that the Appellees made a reasonable interpretation of Congress' ambiguous language in recognizing the Community and in adopting IGRA.

The Community continues to assert that Congress meant what it said when it recognized the Community using nearly the exact same language it previously used to define the term "Indian tribe" in IGRA; and, therefore, that the Community is an "Indian tribe" for the limited purpose of IGRA.

STATEMENT OF JURISDICTION

The District Court had jurisdiction over this matter under 28 U.S.C. § 1331, as the Community's claims arose under federal law, including IGRA, the 1994 Frank's Landing Recognition Act, P.L. 103-435, 108 Stat. 4566, the Administrative Procedure Act, 5 U.S.C. §§ 701, *et seq*. (the "APA"), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

This Court has jurisdiction over the Community's appeal from the District Court's final order granting the Defendant-Appellees' Motion for Summary Judgment pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the Frank's Landing Indian Community constitutes an "Indian tribe" under IGRA's definition of that term.

ADDENDUM

All pertinent statutes are contained in the addendum attached hereto.

STATEMENT OF THE CASE

In December 2014, the Community submitted a tribal gaming ordinance to the National Indian Gaming Commission (the "NIGC") for review and approval in accordance with IGRA. The NIGC referred the matter to the Department of the Interior ("DOI") for a determination as to whether the Community constitutes an "Indian tribe" under IGRA. On March 6, 2015, the Assistant Secretary of the Interior – Indian Affairs (the "AS-IA") issued a determination that the Community was not an "Indian tribe" under IGRA's definition of that term, because the Community does not appear on the list of federally recognized Indian tribes that is published by DOI each year pursuant to the Federally Recognized Indian Tribes List Act of 1994, Pub. L. No. 103-454, 25 U.S.C. §§ 5130-31 (the "1994 Tribal List Act") (Add. at 1).

On November 13, 2015, the Community filed its complaint seeking declaratory and injunctive relief against the NIGC and its Chairman, as well as against DOI, the Secretary of the Interior, and the AS-IA (ER Vol. II/226).

The NIGC and its Chairman filed a motion to dismiss themselves as parties to the litigation on May 12, 2016 for lack of jurisdiction and failure to state a claim upon which relief can be granted (ER Vol. II/192). The District Court granted the motion in an order issued August 15, 2016 (ER Vol. I/23).

The remaining parties filed cross-motions for summary judgment (ER's Vol. II/84, 110). The District Court did not hold a hearing on the motions, and issued an order on March 15, 2017 granting federal Defendants' motion for summary judgment, and denying the Community's motion for summary judgment (ER Vol. I/1, 2). The District Court found that the relevant statutory text was ambiguous, and that the federal Defendants had issued a reasonable interpretation of the statutes under the two-step process for statutory interpretation announced in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837 (1984). The Community filed its Notice of Appeal on May 2, 2017 (ER Vol. II/33) appealing from the District Court's March 15, 2017 Order and the August 15, 2017 Order (ER's Vol. I/2, 23).

STATEMENT OF FACTS

The Frank's Landing Indian Community enjoys a unique legal status under federal law. While it is not a full-fledged federally recognized Indian tribe, the Community has been recognized by the United States as a self-governing dependent Indian community that possesses limited sovereign powers necessary to

engage in self-government. The Community is governed by an elected council, pursuant to a tribal constitution adopted in 2007; and, it has enjoyed a government-to-government relationship with the United States for the past century.

The Community is located near Olympia, Washington, not far from where the Nisqually River enters the Puget Sound. The Community's present-day members descend from the American Indians who signed the Medicine Creek Treaty of 1859, which set aside lands for the Community on the Nisqually River.

The Secretary of the Interior purchased land for the Community in 1919 adjacent to the Nisqually River, to replace Community lands needed for military purposes. The Community's members relocated to the newly acquired lands and began operating businesses on the site for the benefit of its members. In 1969, the Community sold cigarettes, handcrafts, and fish at its retail store to help fund its legal costs in litigation over the scope of its treaty fishing rights. The Community's legal position was vindicated in the landmark "Boldt Decision" in *United States v. Washington*, 384 F.Supp. 312 (W.D. Wash. 1974). Community members continue to exercise their treaty-reserved fishing rights to this day.

In 1974, the Community established the Wa-He-Lute Indian School on its lands. The Wa-He-Lute Indian School's facilities were constructed with proceeds from the Community's retail operations, as well as with funds provided by the Bureau of Indian Affairs (the "BIA") and the United States Department of

Agriculture. *See* DOI AR 0187 (*William Frank, Jr. v. Commissioner of Internal Revenue*, Petitioners' Summary of Factual History: Frank's Landing, Docket Nos. 12682-81; 28694-28697-82 (U.S. Tax Court)). In 1980, Congress enacted Pub. L. No. 96-277, which directed the Secretary of the Interior to acquire the Wa-He-Lute Indian School property in trust status, and to maintain title to the property under the Secretary's administration. *See* DOI AR 0179 (citing Pub. L. No. 96-277 (June 17, 1980)).

The Community continues to operate the Wa-He-Lute Indian School, and the Department of the Interior continues to provide funding for the Community's school. For example, the BIA awarded $3.8 million in grant funds to the Community's Wa-He-Lute Indian School in 2012 pursuant to the Tribally-Controlled School Grants Program under 25 U.S.C. § 2501 *et seq*. *See* DOI AR 0062-63. As of September 2015, the BIA continued to list the Community's Wa-He-Lute Indian School on its website as a school "operated by [a] tribe or tribal government via a contract or grant." DOI AR 0212-13.

In 1987, Congress confirmed the Community's unique, pre-existing legal status as an independent Indian community by enacting Pub. L. No. 100-153, § 10 (Nov. 5, 1987)(the "1987 Frank's Landing Act") (Add. at 33). The 1987 Frank's Landing Act recognized the Community "as eligible for the special programs and

services provided by the United States Indians because of their status as Indians…."

Seven years later, in 1994, Congress reaffirmed and clarified the Community's unique status as an independent Indian community under federal law by enacting Pub. L. No. 103-435, 108 Stat. 4566 (November 2, 1994)(the "1994 Frank's Landing Act") (Add. at 7). The 1994 Frank's Landing Act amended the 1987 Frank's Landing Act, so that it reads as follows:

> (a) Subject to subsection (b), the Frank's Landing Indian Community in the State of Washington is hereby recognized;
>
> (1) ***as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*** and is recognized as eligible to contract, and to receive grants, under the Indian Self-Determination and Education Assistance Act for such services, but the proviso in section 4(c) of such Act (25 U.S.C. 450b(c)) shall not apply with respect to grants awarded to, and contracts entered into with, such Community; and
>
> (2) ***as a self-governing dependent Indian community*** that is not subject to the jurisdiction of any federally recognized tribe.
>
> (b)(1) Nothing in this section may be construed to alter or affect the jurisdiction of the State of Washington under section 1162 of title 18, United States Code.
>
> (2) Nothing in this section may be construed to constitute the recognition by the United States that the Frank's Landing Indian Community is a federally recognized Indian tribe.
>
> (3) Notwithstanding any other provision of law, the Frank's Landing Indian Community ***shall not engage in any class III gaming activity*** (as defined in section 3(8) of the Indian gaming regulatory Act of 1988).

Pub. L. No. 103-435, 108 Stat. 4566 (emphasis added)(together, the 1987 and 1994 acts are referred to as the "Frank's Landing Acts"). Prior to adopting this final language, Congress rejected a proposed legislative amendment that would have categorically barred the Community from engaging in all forms of gaming under IGRA. DOI AR 0159-0160 (citing Cong. Rec. Volume 140, Issue 144 (Oct. 6, 1994))(the "Richardson Amendment"). [1]

On November 19, 2014, the Community's governing body adopted a tribal gaming ordinance to regulate class II gaming on its Indian lands. It submitted that ordinance to the NIGC for review and approval in accordance with IGRA on December 8, 2014. *See* DOI AR 0001-0015; and, DOI AR 0134. The Community asserted that it qualified as an "Indian tribe" under IGRA's definition of that term for the limited purpose of regulating gaming activities in accordance with IGRA. *See* DOI AR 0030-0037.

By email dated December 11, 2014, the NIGC's General Legal Counsel requested "a legal opinion and/or determination" on the question of whether the Community qualified as an "Indian tribe" under IGRA. DOI AR 0064. On March

[1] The Richardson Amendment stated: "Notwithstanding any other provision of law, the [Community] shall not engage in ***any gaming activity*** [under IGRA]." *Id*. (emphasis added).

[2] The 1994 Tribal List Act requires the Secretary of the Interior to publish an annual list of "all Indian tribes which the Secretary recognizes as eligible for the special programs and services provided by the United States to Indians because of

6, 2015, the AS-IA issued a memorandum determining that the Community did not qualify as an "Indian tribe" for purposes of IGRA because the Community does not appear on the annual list of recognized Indian tribes published in accordance with the 1994 Tribal List Act. DOI AR 0080 (the "March 6th Decision").[2] The AS-IA stated, "[t]he NIGC is entitled to rely on [the list published under the 1994 Tribal List Act] as a definitive means of determining whether an entity is a federally-recognized Indian tribe [for purposes of IGRA]." *Id*. He added, "[the 1994 Tribal List Act] also provides a simple 'bright line' rule that preserves government resources around such matters." *Id*.

The Community filed its complaint on November 13, 2015, after the AS-IA denied its request for reconsideration of the March 6th Decision (ER Vol. II/226).

STANDARD OF REVIEW

The District Court's statutory interpretation of the Franks Landing Acts and IGRA, and its determination concerning the meaning of certain statutory phrases within those statutes is subject to *de novo* review. *Schleining v. Thomas*, 642 F.3d 1242, 1246 (9th Cir. 2011) (explaining that questions of statutory construction are

[2] The 1994 Tribal List Act requires the Secretary of the Interior to publish an annual list of "all Indian tribes which the Secretary recognizes as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 479a-1. *See* Add. at 2. "Indian tribe" is a defined term under the 1994 Tribal List Act. The statutory definition states: "The term 'Indian tribe' means any Indian or Alaska Native tribe, band, pueblo, village or community that the Secretary acknowledges to exist as an Indian tribe." 25 U.S.C. § 5130(2). *See* Add. at 1.

reviewed *de novo*). No deference is to be accorded to the District Court's legal conclusions that led to its granting of summary judgment in favor of Defendant-Appellees. *Rabkin v. Or. Health Scis. Univ.*, 350 F.3d 967, 970 (9th Cir. 2003) (quoting *Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991) ("[w]hen *de novo* review is compelled, no form of appellate deference is acceptable."). The appellate court must consider the matter anew, as if no decision previously had been rendered. *See Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006).

The applicability of canons of statutory construction and case law regarding deference to agency decisions in interpreting the Franks Landing Acts and IGRA are discussed in detail, infra.

ARGUMENT

Congress meant what it said when it recognized the Frank's Landing Indian Community in 1994: the Community is a "self-governing dependent Indian community" that is recognized as "eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* 1994 Frank's Landing Act (Add. at 7). Congress used nearly the exact same language to recognize the Community that it used to define the term "Indian tribe" when it adopted IGRA six years earlier.

The Appellees argue that the 1987 and 1994 Franks Landing Acts, along with IGRA's definition of "Indian tribe," are all ambiguous; and, that they may

therefore substitute a different definition of the term "Indian tribe." Moreover, the Appellees argue that the Community is not an "Indian tribe" under the definition they have chosen. The District Court agreed with the Appellees' position. That decision was in error.

By any measure, IGRA's definition of the term "Indian tribe," and the language Congress used to recognize the Frank's Landing Indian Community are clear and unambiguous. The Frank's Landing Indian Community clearly constitutes an "Indian tribe" under that unambiguous language. But, even if that language were ambiguous, the Appellees' interpretation was unreasonable and contrary to law.

A. The Franks Landing Acts, as well as IGRA's definition of "Indian tribe," are clear and unambiguous.

Where Congress has spoken to the precise question at issue with clear and unambiguous language, a Court should not proceed any further to determine whether an agency's interpretation of statutory language was permissible. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1162 (9th Cir. 1999)("If the intent of Congress is clear, that is the end of the matter")(quoting *Chevron,* 467 U.S. 837 (1984)); and, *Aragon-Salazar v. Holder*, 769 F.3d 699, 706 (9th Cir. 2014)("Because the statutory language is unambiguous, we end our inquiry at *Chevron's* first step, and need not reach the question whether the [Board of

Immigration Appeals'] approach is based on a permissible construction of the statute.").

Neither the 1987 and 1994 Franks Landing Acts, nor IGRA, are ambiguous (Adds. at 7, 33). Congress has spoken to the precise question at issue here: 1) whether the Frank's Landing Indian Community is recognized as eligible for the programs and services provided by the United States to Indians because of their status as Indians; and, 2) whether the Frank's Landing Indian Community is recognized as possessing powers of self-government. Even a cursory reading of the relevant statutory text reveals that the answer is unequivocal: the Frank's Landing Indian Community has been recognized by Congress as eligible for the programs and services provided by the United States to Indians because of their status as Indians; and, the Community has been recognized by Congress as possessing powers of self-government.

In the face of such clear, unambiguous, and unequivocal statutory language, the Court should proceed no further to determine whether the Appellees' substitution of the 1994 Tribal List Act's definition of "Indian tribe" for the definition adopted by Congress in IGRA was permissible. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1162 (9th Cir. 1999)("If the intent of Congress is clear, that is the end of the matter")(quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984)); and, *Aragon-Salazar v. Holder*,

769 F.3d 699, 706 (9th Cir. 2014)("Because the statutory language is unambiguous, we end our inquiry at *Chevron's* first step, and need not reach the question whether the [Board of Immigration Appeals'] approach is based on a permissible construction of the statute.").

1. The plain language Congress used in IGRA and the Frank's Landing Act makes it clear that the Community is an "Indian tribe" under IGRA's definition of that term.

The United States has assumed a solemn trust obligation with respect to American Indians, and has carried out its trust responsibilities under various treaties and statutes. *See Seminole Nation v. United States*, 316 U.S. 286, 315 (1942)("…this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people."). Nevertheless, "[t]here has never been a single, all-purpose definition of the terms 'Indian tribe' or 'Indian nation' for federal purposes…." Cohen's Handbook of Federal Indian Law at § 3.02[1] (2005 Ed.).

Congress has supplied different definitions for the term "Indian tribe" in different statutes, in order to achieve different purposes. Congress has indeed recognized Indian communities, groups, and organizations as "Indian tribes" for limited statutory purposes, where those groups do not constitute federally recognized Indian tribes for all purposes. *See*, *e.g.*, the Native American Housing Assistance and Self-Determination Act, Pub. L. No 106-569, 25 U.S.C. § 4103(13)

(including state-recognized Indian tribes within the statutory definition of "Indian tribes"); and the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. § 1903(8) (including Alaska Native communities within the statutory definition of the term "Indian tribes" at a time when they were not considered federally recognized Indian tribes). The Federal Courts have acknowledged that a non-recognized Indian group can constitute an "Indian tribe" for certain statutes, even where that statute does not define the term "Indian tribe." *See Joint Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975)(holding that the Indian Non-Intercourse Act applied to the Passamaquoddy Tribe, even though the tribe was not a federally recognized Indian tribe).

When Congress adopted IGRA in 1988, it supplied an unambiguous statutory definition of the term "Indian tribe." 25 U.S.C. § 2703(5). Add. at 19. That definition includes three elements:

> [1] The group must be an "Indian tribe, band, nation, or other group or community of Indians;"
> [2] The group must be "recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians;" and,
> [3] The group must be "recognized as possessing powers of self-government."

Id. *See also* 25 C.F.R § 502.13 (citing IGRA language verbatim in context of NIGC regulations). Nothing about this definition is ambiguous.

Similarly, nothing about the 1987 and 1994 Frank's Landing Acts are ambiguous. Congress recognized the Community as "eligible for the special programs and services provided by the United States to Indians because of their status as Indians," and as a "self-governing dependent Indian Community." *See* Pub. L. No. 100-153; and, Pub. L. No. 103-435. In an earlier case, the District Court declared, "the 1994 legislation is clear on its face." *Nisqually Indian Tribe v. Gregoire*, 649 F. Supp. 2d 1203, 1210 (W.D. Wash. 2009)("Because the language of the 1994 legislation is clear on its face, the Court declines to consider the modest evidence of Congressional intent gleaned from the colloquy between Representatives Thomas and Richardson."), aff'd, *Nisqually Indian Tribe v. Gregoire*, 623 F.3d 923 (9th Cir. 2010).

There is no doubt that the Community is a community of Indians. The Community has been recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and, it has been recognized as possessing powers of self-government. These are the same criteria for classification as an "Indian tribe" under IGRA. *See* 25 U.S.C. § 2703(5). Add. at 19. This is apparent from a side-by-side comparison of the statutory language Congress used in § 2703(5) of IGRA and in the Frank's Landing Acts:

IGRA § 2703(5)	**Frank's Landing Acts**
(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which— (A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and (B) is recognized as possessing powers of self-government.	(a) Subject to subsection (b), the Frank's Landing Indian Community in the State of Washington is hereby ***recognized***; (1) ***as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*** and is recognized as eligible to contract, and to receive grants, under the Indian Self-Determination and Education Assistance Act for such services, but the proviso in section 4(c) of such Act (25 U.S.C. 450b(c)) shall not apply with respect to grants awarded to, and contracts entered into with, such Community; and (2) as a ***self-governing dependent Indian community*** that is not subject to the jurisdiction of any federally recognized tribe. Pub. L. No. 103-435, 108 Stat. 4566 (November 2, 1994)(emphasis added).

This statutory language can only be considered "ambiguous" if it is susceptible to multiple reasonable interpretations. *See Guido v. Mount Lemmon Fire District*, 859 F.3d 1168, 1173 (9th Cir. 2017). Simply "declaring that multiple reasonable interpretations exist does not make it so." *Id*. at 12.

With respect to this case, the phrases "community of Indians," "programs and services provided by the United States to Indians because of their status as

Indians" and "self-government/self-governing" must be susceptible to different interpretations in order for them to be considered ambiguous. The District Court did not explain how these phrases could have one meaning under the Frank's Landing Acts while possessing an entirely different meaning under IGRA. A review of federal Indian law shows that each of these phrases has a clear meaning.

a. The term "dependent Indian community" is unambiguous.

In order to qualify as an "Indian tribe" under IGRA, an entity must be either an "Indian tribe, band, nation, or other organized group or community of Indians[.]" 25 U.S.C. § 2703(5). Add. at 19. In 1994, Congress recognized the Frank's Landing Indian Community as a "dependent Indian community." Pub. L. No. 103-435. Add. at 10.

The term "dependent Indian community" is unambiguous, as it has clear legal meaning under federal law. The United States Supreme Court has explained that a "dependent Indian community" exists where Congress has set aside land for a community of Indians under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998). In *Venetie*, the Supreme Court was assessing the application of 18 U.S.C. § 1151, which established "dependent Indian communities" firmly within the definition of "Indian country" for purposes of federal jurisdiction in 1948. The Court noted that, in adopting 18 U.S.C. § 1151, Congress was codifying standards that the Supreme Court had

applied as early as 1913. *Id*. at 528 (citing *United States v. Sandoval*, 231 U.S. 28 (1913)). The Tenth Circuit Court of Appeals reaffirmed the meaning of this phrase in 2006, when it held that a residential neighborhood along a public roadway constituted a "dependent Indian community" subject to federal jurisdiction because it was set aside by the United States for Indians and remained under federal superintendence. *United States v. Arrieta*, 436 F.3d 1246 (10th Cir. 2006).

The term "dependent Indian community" has had an established meaning under federal law for more than a century, and that meaning has been codified in the United States Code since 1948. There is no evidence to suggest that Congress had another meaning in mind in 1994 when it recognized the Frank's Landing Indian Community as a "dependent Indian community." Moreover, there is no doubt that a "dependent Indian community" constitutes a "community of Indians" under IGRA at 25 U.S.C. § 2703(5). *See* Add. at 19.

b. The phrase "special programs and services provided by the United States to Indians because of their status as Indians" has a clear meaning under federal law.

The phrase "special programs and services provided by the United States to Indians because of their status as Indians" is used throughout federal statutory law. *See*, *e.g*., Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 25 U.S.C. § 5301 *et seq.*; and National Historic Preservation Act, Pub. L. No. 89-665, 54 U.S.C. § 300309 (defining the term "Indian tribe" to include tribes and

Alaska Native Regional and Village Corporations that are recognized as "eligible for the special programs and services provided by the United States to Indians because of their status as Indians."). This phrase has a well-established meaning under federal law.

This Court examined the meaning of this phrase in *Navajo Nation v. Department of Health and Human Services*, 325 F.3d 1133 (9th Cir. 2003). In *Navajo Nation*, this Court held that the phrase "programs and services provided by the United States to Indians because of their status as Indians" refers to those federal programs "specifically targeted to Indians and not merely programs that collaterally benefit Indians as a part of the broader population." *Id*. at 1138. By way of example, this Court explained that programs and services administered under the Johnson-O'Malley[3], Snyder[4], and Transfer Acts[5] fell within the meaning of this phrase. *See Id*. This Court reached the same conclusion in *Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986, 991-92 (9th Cir. 2005), where it described programs and services provided to Indians "because of their status as Indians" as those specifically targeted to Indians or an Indian tribe.

[3] 48 Stat. 596.

[4] 42 Stat. 208.

[5] 68 Stat. 674.

Cohen's Handbook of Federal Indian Law explains that the Secretary of the Interior, through the Bureau of Indian Affairs, administers a range of programs and services provided to Indians because of their status as Indians, including trust asset management, tribal government support, education, housing, and economic development support. Cohen's Handbook of Federal Indian Law § 5.03[1] (2005 Ed.); *see also* Fletcher, *Federal Indian Law* at 188-90 (West 2016)(explaining that Indian education is one of the special programs and services provided by the United States to Indians because of their status as Indians). The Snyder Act provides a broad statutory basis for the Secretary's administration of these programs. *See* 25 U.S.C. § 13 (authorizing funding for the Secretary and the Bureau of Indian Affairs to provide services to Indians, including education, administration of Indian property, and industrial assistance).

The impact of this language, with respect to an Indian tribe's or community's legal status, is reinforced by congressional enactments terminating the legal status of Indian tribes. For example, Congress terminated the Catawba Indian Tribe in 1959 by a legislative enactment that expressly stated, "the tribe and its members shall not be entitled to any of the special services performed by the United States for Indians because of their status as Indians…." *South Carolina v. Catawba Indian Tribe, Inc*., 476 U.S. 498, 505 (1986)(quoting Pub. L. No. 86-322, subsequently repealed). Congress terminated the tribal status of the Menominee

Tribe of Indians in similar language, stating "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the [Menominee] tribe…." *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 416 (1968)(quoting, Pub. L. No. 86-733, subsequently repealed).

This phrase has a clear meaning under federal law. These programs and services include the special programs that are specifically targeted to Indians and Indian tribes, as well as expressly identified groups of Indians – like the Community. Federally recognized Indian tribes are eligible for programs and services provided by the Federal Government to Indians "because of their status as Indians," alongside other groups - like the Community - that Congress has expressly recognized as eligible for those programs. Non-tribes, and tribes that were terminated from, and not subsequently restored to, federal recognition, are not eligible for those programs.

There is no evidence in the statutory text of either the 1987 or the 1994 Frank's Landing Acts that Congress intended to recognize the Community as eligible for only some of the programs and services provided by the United States to Indians because of their status as Indians. Quite the contrary. In two separate enactments, including one adopted six years after IGRA went into effect, Congress recognized the Community as eligible for "***the*** special programs and services provided by the United States to Indians because of their status as Indians." Pub. L.

No. 103-435 (emphasis added). Moreover, there is no evidence in the statutory text of IGRA that Congress intended for this phrase to carry a different meaning than its commonly-accepted meaning under federal law. [6]

c. The phrases "self-government" and "self-governing" share the same meaning, and are unambiguous.

The final criterion for IGRA's definition of "Indian tribe" requires an entity to demonstrate that it "is recognized as possessing powers of self-government." 25 U.S.C. § 2703(5)(B). Add. at 19. In reaffirming the its unique legal status in 1994, Congress recognized the Community as a "***self-governing*** dependent Indian community." Pub. L. No. 103-435 (emphasis added). Add. at 10. These phrases also carry an established meaning under federal law.

The Supreme Court has characterized tribal self-government as the ability of tribes to exercise governing authority over their members and lands, and to be governed by rules they have established for themselves. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980)(citing *United States v. Mazurie*, 419 U.S. 544 (1975) and *Williams v. Lee*, 358 U.S. 217 (1959)). Similarly, this Court has characterized the powers of self-government as extending to "intramural matters," such as conditions for tribal membership, inheritance, and domestic relations. *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116

[6] See discussion of the District Court's mistaken reliance on the 1994 Tribal List Act's use of this phrase, infra at 47-52.

(9th Cir. 1985). Other courts have described these powers as including the ability to deliver a number of services, including education. *See MaCarthur v. San Juan County*, 391 F. Supp. 2d 895, 937-38 (D. Utah 2005).

There is no indication that Congress intended for the Community to be "self-governing" without "possessing powers of self-government." In fact, the District Court stated as much in the *Gregoire* litigation:

> A necessary and inherent power of a self-governing entity is the power to contract with those individuals or entities with whom the self-governing entity finds it necessary to contract, in order to fulfill its obligations to govern and to administer programs for the benefit of the governed.
>
> Courts require a clear expression of Congressional intent to find that tribal authority has been abrogated. The 1994 [Frank's Landing Act] does contain certain specified restrictions on the governmental powers or authority to be exercised by the Frank's Landing Indian Community: a) it is not a tribe and therefore presumably lacks some powers of a sovereign; b) it is subject to Washington criminal laws, and c) it cannot conduct Class III gaming. If the purpose of the Act was to limit the power to contract to those contracts with the federal government under the ISDEAA, the anti-gaming provision would not have been necessary. It is inconceivable that Class III gaming could be conducted on community lands without the execution of a single contract necessary to build a facility, install necessary gaming equipment, employ personnel or provide other basic services such as food, beverage, or sanitary facilities. As a self-governing community, the Frank's Landing Indian Community has the inherent right to enter into contracts.

Gregoire, 649 F. Supp. 2d at 1209-10 (internal citations omitted).

There is no plausible way to interpret the phrases "self-government" and "self-governing," as used in IGRA and the Frank's Landing Acts, to mean different things. In both instances, these phrases reference the widely understood ability of Indians to govern their own affairs and provide services to their members. With respect to the Community, Congress has explicitly recognized the Community as "self-governing" and the District Court in *Gregoire* affirmed that this recognition necessarily carries with it the ability to exercise powers of self-government.

2. Congress' classification of the Community as an "Indian tribe" under IGRA is consistent with the purpose of IGRA and the Frank's Landing Acts.

As explained above, IGRA's definition of the term "Indian tribe" incorporates phrases that have clear and unambiguous meaning under federal Indian law. Congress used those same phrases in recognizing the Community's legal status. Moreover, there is no indication in the text of either IGRA or the Frank's Landing Acts that Congress intended for these phrases to carry different meanings under each act. There is a strong presumption that the plain language of the statute expresses congressional intent, which is "rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed." *Ardestani v. I.N.S.*, 502 U.S. 129, 135-36 (1991). In those rare and exceptional circumstances, courts may look beyond seemingly clear and unambiguous language to determine whether a literal interpretation would undermine the

purpose of the statute, lead to an absurd result, or lead to an outcome that conflicts with the intent of lawmakers. *See Royal Foods Co. Inc. v. RJR Holdings*, 252 F.3d 1102, 1108 (9th Cir. 2001). This is not a rare and exceptional circumstance where a plain reading of clear statutory language would lead undermine the relevant statutes or otherwise lead to an absurd result.

a. Congress considered IGRA's impact on the 1994 Frank's Landing Act.

Congress may or may not have had the Frank's Landing Indian Community particularly in mind when it enacted IGRA in 1988, but it certainly had IGRA in mind when it enacted the 1994 Frank's Landing Act. Congress reaffirmed the Community's legal status in 1994 using the precise language it used to define the term "Indian tribe" in IGRA. Courts interpreting statutory language should presume that Congress was aware of the impact of the language it used to reaffirm the Community's unique legal status. *See*, *e.g.*, *United States v. Gonzales-Mendez*, 150 F.3d 1058, 1061 (9th Cir. 1998)("We presume Congress enacts statutes with full knowledge of the existing law."); and, *Doe v. Mann*, 415 F.3d 1038, 1064 (9th Cir. 2005)(explaining that Congress is presumed to have been aware of the scope of state jurisdiction over Indian child welfare proceedings when it enacted the Indian Child Welfare Act).

Congress rejected the proposed Richardson Amendment to the 1994 Frank's Landing Act, which would have categorically barred the Community from

engaging in all forms of gaming under IGRA. DOI AR 0159-0160 (citing Cong. Rec. Volume 140, Issue 144 (Oct. 6, 1994). Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language. *Wildwest Institute v. Kurth*, 855 F.3d 995, 1006, n.17 (9th Cir. April 28, 2017)(citing *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987)). Most importantly, Congress explicitly referenced IGRA in the 1994 Frank's Landing Act by prohibiting the Community from engaging in only one out of the three classes of gaming regulated by IGRA. *See* Pub. L. 103-435, 108 Stat. 4566 ("the Frank's Landing Indian Community ***shall not engage in any class III gaming activity*** (as defined in section 3(8) of the Indian gaming regulatory Act of 1988).").

The District Court rationalizes that the explicit language in the 1994 Franks Landing Act regarding IGRA was added to address a hypothetical situation wherein the Community, at some unknown time in the future, and involving some unknown circumstance, achieved full federal recognition: ER Vol. I/19. There is nothing in the plain language or the legislative history of the Franks Landing Acts to support such a position. Moreover, the 1994 Franks Landing Act expressly states that the statute does not provide Community full recognition status. Add. at 10. It is a *non sequitur* to assert that Congress would provide such direction when

it is expressly stating that the statute does not provide the Community full federal recognition. Even if the District Court's rationalization were correct, it still renders the gaming provisions in the 1994 Franks Landing Act superfluous. It is a cardinal principle of statutory construction that statute should, on the whole, be construed so that, if possible, no clause, sentence or word is rendered superfluous, void or insignificant. *TRW v. Andrews*, 534 U.S. 19, 31 (2001); *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 928 (9th. Cir. 2004).

In light of the foregoing, it cannot plausibly be claimed that Congress did not consider the potential consequences of the language it used in the 1994 Frank's Landing Act with respect to IGRA. *See Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1313 (9th Cir. 1992)("No sensible person accustomed to the use of words in laws would speak so narrowly and precisely of particular statutory provisions, while meaning to imply a more general and broad coverage than the statutes designated."). Congress could have remained silent with respect to IGRA. Congress could have categorically barred the Community from engaging in gaming under IGRA, or Congress could have used unique language to clarify the Community's status. It did none of those things.

Instead, Congress recognized the Community as having a unique legal status under federal law with the intention that the Community would have all of the powers necessary to generate the revenues it needs to sustain its governmental

programs and remain self-governing. These purposes align squarely with the purposes underlying IGRA, as the District Court explained in earlier litigation regarding the Community's legal status:

> Congress clearly intended with the enactment of Pub. L. No. 103-435 for the Community to be given limited sovereign powers, as a dependent Indian Community, in order to sustain its governmental programs, and this includes the power to contract with other tribes. This holding is consistent with the federal government's policy of promoting Indian self-reliance and government. ***See, e.g., Indian Gaming Regulation Act*** [sic], 25 U.S.C. § 2701(4).

See Gregoire, 649 F. Supp. 2d at 1210 (emphasis added).[7]

b. Classification of the Community as an "Indian tribe" under IGRA's definition of that term is consistent with this Court's reasoning and is therefore not an absurd result.

Admittedly, the Community possesses a unique legal status under federal law. The Community is unaware of any other groups, entities, or organizations that have been explicitly recognized by Congress as a "self-governing dependent Indian community." Simply stated, the Community is an anomaly.

But, the fact that the Community has a unique legal status does not *ipso facto* mean that it would be absurd to find that it constitutes an "Indian tribe" under

[7] The District Court included a footnote on this point in *Gregoire*, acknowledging that "[a]lthough the [Community] is prohibited from conducting Class III gaming, the broad expression of Federal Indian policy contained within the Indian Gaming Regulation Act [sic] is still a useful source of guidance in this case." *Gregoire*, 649 F. Supp. 2d at n.4.

IGRA. In a recent case interpreting IGRA, the Supreme Court explained that anomalies often arise from Congress' enactments. *See Michigan v. Bay Mills Indian Community*, 572 U.S. _____; 134 S. Ct. 2024, 2033 (2014). The Court stated, "this Court does not revise legislation, as Michigan proposes, just because the text as written creates an apparent anomaly as to some subject it does not address." *Id*. The Court also added that it cannot "disregard clear language upon the view that…Congress must have intended something broader." *Id*. at 2034.

The Appellees in this case would argue that the Community cannot possibly be an Indian tribe under IGRA's clear language because Congress probably intended a different outcome. That Congress expressly contemplated that the Community would engage in Class II gaming under IGRA, discussed infra, certainly rules out that the Community's gaming under IGRA is an "absurd result." Even if that faulty reasoning were correct, the Supreme Court explained in *Bay Mills* that an assumption that Congress did not intend for an anomalous result is not sufficient to override statutory language that is clear on its face.

The Community's position accords with this Court's reading of a statutorily defined term in *Royal Foods Co. Inc. v. RJR Holdings*, 252 F.3d 1102 (9th Cir. 2001). In that case, the Defendant RJR Holdings was the owner of a chain of restaurants and argued that it was not a "dealer" as that term is defined under the

Perishable Agricultural Commodities Act of 1930. That statute defined the term "dealer" as:

> …any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of $230,000; and (C) no person buying any commodity other than potatoes for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 499c of this title, and in such case and while the license is in effect such person shall be considered as a "dealer."

7 U.S.C. § 499a(b)(6). The Defendant argued that the term "dealer" was ambiguous when applied to restaurants because it did not explicitly include "restaurants" within its definition. *Royal Foods Co*., 252 F.3d at 1107. This Court determined that the statutory definition of "dealer" was not ambiguous, and that the Defendant was a "dealer" under its clear language because the Defendant satisfied the criteria set forth in the statutory definition of that term. *Id*. at 1107. It also

added that, because the language was unambiguous, it need not defer to any agency interpretation. *Id*. at 1109.

A separate opinion issued by the Montana Supreme Court regarding the definition of the term "Indian" further demonstrates that a finding that the Community constitutes an "Indian tribe" for the limited purpose of IGRA is not absurd. In *Schmasow v. Native American Center*, 293 Mont. 382; 978 P.2d 304 (Mont. 1999), the Court examined whether a member of a non-federally recognized Indian tribe could be considered an "Indian" for purposes of the Indian preference in employment provisions in the Indian Self-Determination and Education Assistance Act.

Under the statute at issue in *Schmasow*, an "Indian" was defined as "a person who is a member of an Indian Tribe." 978 .2d at 306. The relevant statute defined an "Indian tribe" as "a Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. *Id*. (quoting 25 U.S.C. § 450b(d)-(e)).[8]

[8] The relevant definitions were included within a contract between a federal agency and a local organization, but mirrored (verbatim) language in the Indian Self-Determination and Education Assistance Act. *Id*.

The Appellant in *Schmasow* argued that the 1994 Tribal List Act[9] was dispositive on the issue of whether a group is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and asserted that only federally recognized Indian tribes were eligible for those programs and services. *Id*. at 303. The Court rejected that argument, and found the non-recognized tribe to constitute an "Indian tribe" for purposes of the Indian Self-Determination and Education Assistance Act because it receives federal funding for special Indian programs and services, "even though it is not a federally recognized tribe." *Id*. at 307-08.

Finally, IGRA itself ensures that the outcome the Community has advanced would not be absurd. Under IGRA, any class II gaming activities operated by the Community would be subject to the full scope of regulations applicable to all class II gaming activities – including oversight by the National Indian Gaming Commission (the "NIGC"). *See* 25 U.S.C. § 2710(b). Add. at 22. Adequate regulation of the Community's class II gaming activities does not require any tortured or piecemeal application of IGRA, or the NIGC's regulations.[10]

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[9] *See also* discussion of the District Court's mistaken reliance on the 1994 Tribal List Act's use of this phrase, infra at 47-52.

[10] It is worth noting here that IGRA explicitly authorizes individuals and even non-Indians to engage in gaming on Indian lands, so long as the activity would also be permitted under state law. 25 U.S.C. § 2710(b)(4)(A)("A tribal ordinance or resolution may provide for the regulation of class II gaming activities owned by

In *Royal Foods Co*, this Court held that an entity falls within the scope of a statutorily defined term if it satisfies the elements established by Congress in defining that term – even where it differs from other entities that fall under the defined category. The Montana Supreme Court reached the same holding in *Schmasow*, with respect to whether a non-recognized Indian tribe can qualify as an "Indian tribe" under a federal statute's definition of that term.

This is not absurd reasoning. Rather, it is consistent with the longstanding rule that courts must follow the explicit definition Congress has chosen to adopt. *See Stenberg v. Carhart*, 530 U.S. 914, 942 (2000)("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning."); and, *Meese III v. Keene*, 481 U.S. 465, 484 (1987)("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term.").

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any person or entity other than the Indian tribe and conducted on Indian lands…"). Add. at 23. This language makes it abundantly clear that IGRA was not adopted to ensure that federally recognized Indian tribes have the exclusive ability to engage in gaming activity on Indian lands. IGRA contemplates that individual Indians, non-tribal entities, and even non-Indians could engage in gaming on Indian lands. The fact that non-Indian individuals can engage in gaming on Indian lands under IGRA is further proof that it would not be absurd for a self-governing dependent Indian community to engage in those activities on its own trust lands.

3. The phrase "by the Secretary" in IGRA's definition of "Indian tribe" does not render the statute ambiguous or otherwise exclude the Community from IGRA's scope.

IGRA's definition of the term "Indian tribe" states that an Indian community must be recognized as eligible for the special Indian programs and services "by the Secretary." 25 U.S.C. § 2703(5)(A). Add. at 19. The Frank's Landing Acts state that the Community "is hereby recognized" as eligible for those special Indian programs and services, but does not include the words "by the Secretary." *See* Franks Landing Acts (Adds. at 7, 33).

The Appellees and the District Court make much of this distinction. *See* ER Vol. I/13. But, it is a distinction without a difference.

It is beyond dispute that Congress has plenary authority to legislate in the field of Indian affairs. *See United States v. Lara*, 541 U.S. 193, 2004 ("…the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as "plenary and exclusive."); and, *United States v. Lomayaoma*, 86 F.3d 142, 145 (9th Cir. 1996)("Historically, Congress has held plenary authority to regulate Indian affairs."). Congress may exercise that authority by recognizing (or even terminating) Indian tribes, or by bringing tribal organizations within the scope of a special-purpose statute. *See*, *e.g.*, *Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 42, 43 (D.C. Cir. 2001)("Congress has the power under the Indian Commerce Clause and the Treaty

and War Powers to recognize Indian tribes."). In exercising this authority, Congress may limit or diminish the privileges and immunities of Indian tribes, such as by subjecting specific Indian tribes to greater state jurisdiction than applicable to other Indian tribes. *See* Maine Indian Claims Settlement Act, Pub. L. No. 96-420, 25 U.S.C. §§ 1721 *et seq*. (subjecting tribal trust lands and resources to the State of Maine's civil and criminal jurisdiction). This is true, even where Congress has prohibited the Secretary from diminishing the privileges and immunities of Indian tribes. *See*, *e.g*., 25 U.S.C. § 5123(f)-(g)(prohibiting federal agencies from diminishing the privileges and immunities of Indian tribes).

Congress has delegated authority to the Secretary to recognize Indian tribes. *See Winnemucca Indian Colony v. United States*, 837 F. Supp. 2d 1184, 1190 (D. Nev., 2011) ("Congress has delegated to the Commissioner of Indian Affairs (head of the BIA), through the Secretary of the Interior (head of the [Department of the Interior]), the task of recognizing Indian tribes, and it has authorized the President to promulgate applicable regulations through these agencies.")(citations omitted). But, the Secretary's authority to recognize Indian tribes (or tribal organizations) is not inherent, and is not independent of Congress' judgment. Indeed, although the administrative process for the Department of the Interior to recognize tribes has been in place since 1978, Congress recognized more Indian tribes between 1978 and 2013 than did the Department. Carlson, Kirsten Matoy, *Congress, Tribal*

Recognition, and Legislative-Administrative Multiplicity, 91 Indiana Law Journal 955, 972 (2016).

The Secretary is not free to simply reject the fact that Congress has recognized the Frank's Landing Indian Community as a "self-governing dependent Indian community" in a manner that brings it within IGRA's scope. Congress' authority to recognize the Community is inherent and plenary, whereas the Secretary's is delegated and limited. The fact that IGRA includes the caveat that Indian communities must be recognized "by the Secretary" as eligible for Indian programs and services is irrelevant where Congress has explicitly made that recognition. An agency's failure to follow the explicit direction of Congress in making a determination that the Community is not an "Indian Tribe" under IGRA is arbitrary and capricious and contrary to law. This Court ruled on this precise question under another statute in *Native Village of Noatak v. Hoffman*, 896 F.2d 1157 (9th Cir. 1990), rev'd on other grounds; *Blatchford v. Native Village of Noatak and Circle Village*, 501 U.S. 775 (1991).[11]

[11] On appeal, the United States Supreme Court reversed the decision of the Ninth Circuit Court of Appeals on the question of whether Congress had abrogated the State of Alaska's sovereign immunity for purposes of the Villages' lawsuit. *See* 501 U.S. at 786-87. The Supreme Court did not render a decision on whether a separate secretarial determination was required under the statute in question, leaving the reasoning of the Court of Appeals intact on the issue of congressional recognition.

In *Hoffman*, this Court stated, "If Congress has recognized the tribe, *a fortiori* the tribe is entitled to recognition and is in fact recognized by the Secretary of the Interior." 896 F.2d at 1160. *Hoffman* remains valid law in this Circuit on this point.

The Secretary's acceptance of Congress' acknowledgment of Indian tribes is obvious in other contexts. For example, Congress recognized the Federated Indians of the Graton Rancheria (the "Graton Rancheria") in Pub. L. No. 106-568 in precise language that did not require the Secretary to take any further action. Congress similarly recognized the Pokagon Band of Potawatomi Indians (the "Pokagon Band") in Pub. L. No. 103-323. Neither the Secretary nor the NIGC has ever contended that they must make an independent "recognition" of whether the Graton Rancheria or the Pokagon Band are eligible for the Federal Government's special programs and services provided to Indians. Instead, the Appellees have simply accepted Congress' recognition of those two tribes. *See* Letter from NIGC Chairman Phil Hogen to John Maier announcing the approval of the Graton Rancheria's tribal gaming ordinance (August 25, 2008)(available at: https://www.nigc.gov/images/uploads/gamingordinances/Ord_App_08.25.08.pdf); and, Letter from NIGC Chairman Phil Hogen to Pokagon Band Chairman John Miller announcing the approval of the Pokagon Band's tribal gaming ordinance (December 5, 2003)(available at:

https://www.nigc.gov/images/uploads/gamingordinances/pokagonband-pokagonord120503.pdf).

The Community does not assert that it is a full-fledged federally recognized Indian tribe as are the Graton Rancheria and the Pokagon Band. Rather, the Community references Congress' recognition of those two tribes to illustrate the point that the Secretary must accede to Congress' deliberate choice to use its own plenary authority to recognize the Community as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. With respect to the Community, the Secretary cannot ignore Congress' command.[12]

4. Under any standard, the Frank's Landing Acts and IGRA's definition of "Indian tribe" are unambiguous.

Questions of statutory interpretation begin with determining whether Congress has spoken to the precise question at issue. If Congress has done so, the Court's inquiry is at its end. *See Browner* and *Chevron*, supra. Federal agencies

[12] The Defendant-Appellees' assertion that the Secretary has not recognized the Community as eligible for the Federal Government's special Indian programs and services is perplexing in light of the fact that the Secretary has actually provided those very services to the Community for decades. *See* DOI AR 0187 (*William Frank, Jr. v. Commissioner of Internal Revenue*, Petitioners' Summary of Factual History: Frank's Landing, Docket Nos. 12682-81; 28694-28697-82 (U.S. Tax Court)). As explained above, these programs and services – which include education and administration of land held in trust – are the same programs and services referenced in both IGRA and the Frank's Landing Acts. This begs the question: If the Secretary has not recognized the Community as eligible for those programs and services, why is the Secretary providing them to the Community?

and courts must give effect to the unambiguously expressed intent of Congress. *Zinman v. Shalala*, 67 F.3d 841, 844 (9th Cir. 1995). Congress has left no room for the Appellees to interpret its enactments in this case.

In this instance, Congress has recognized the Frank's Landing Indian Community using the precise language that it used to define the term "Indian tribe" in IGRA. The language used by Congress has established meaning in the context of federal Indian law, and is not susceptible to multiple interpretations. There is nothing in either IGRA or the Frank's Landing Acts that indicates Congress intended for its language to have different meanings under the different enactments.

Even looking beyond the plain language of the statutes, nothing in either IGRA or the Frank's Landing Acts indicates that the Community's classification as an "Indian tribe" for IGRA's limited purposes would be contrary to Congress' intent or that it would be an absurd outcome. Under every possible measure of whether a statute is ambiguous, the Frank's Landing Acts and IGRA are clear and unambiguous. That fact leaves no room for the Appellees to supply their own interpretation.

B. Even if IGRA's definition of "Indian tribe" and the Frank's Landing Acts were ambiguous, the Appellees' interpretation is wholly unreasonable.

As explained above, IGRA and the Frank's Landing Acts are unambiguous, and Congress has left no room for the Appellees to supply their own interpretation of its enactments. But, even if those enactments were deemed ambiguous, the interpretation set forth in the March 6, 2015 Decision was wholly unreasonable and is entitled to no deference by any court. *See Chevron,* 467 U.S. at 842-44*; Sharemaster v. U.S. Securities & Exchange Commission*, 847 F.3d 1059, 1068 (9th. Cir. 2017); *U.S. v. Garcia-Santana*, 774 F.3d 528, 542 (9th Cir. 2014); *Espejo v. I.N.S.*, 311 F.3d 976, 978 (9th Cir. 2002).

1. The Defendant-Appellees' March 6, 2015 Decision must be reviewed for reasonableness under the second step of a *Chevron* analysis.

In its decision below, the District Court suggested that the standard of review applicable to the Defendant-Appellees' interpretation of IGRA was also at issue in this dispute. *See* ER Vol. I/16 ("Absent any argument on the issue, the Court will not decide whether the Secretary's interpretation of the IGRA must be evaluated for reasonableness or manifest error.").

The vast body of case law applying the Supreme Court's decision in *Chevron* to agency interpretations of ambiguous statutes indicates that courts must review an agency's interpretation to determine whether it is reasonable. *See*, *e.g.*, *United States v. Haggar Apparel Co*., 526 U.S. 380, 392 (1999)("If, however, the

agency's statutory interpretation fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design, we give that judgment controlling weight.")(internal quotations omitted); *Valencia v. Lynch*, 811 F.3d 1211, 1215 (9th Cir. 2016)("If the agency sets forth a reasonable interpretation that is not arbitrary, capricious, or manifestly contrary to the statute, we must defer to it."); and, *Navarro v. Encino Motorcars, LLC*, 780 F.3d 1267, 1273 (9th Cir. 2015)("Under *Chevron* step two, if the agency's interpretation is a reasonable one, this court may not substitute its own construction of the statutory provision."). Thus, the "reasonableness" standard applied under *Chevron's* second step is applicable to any judicial review of the March 6, 2015 Decision.

An agency's interpretation of an ambiguous statute may be unreasonable if, for example, its view would render statutory language meaningless or superfluous, or if it reads words entirely out of a statute. *See Navarro*, 780 F.3d at 1275 ("If the agency read out a word altogether, its interpretation likely would be unreasonable."). An agency's interpretation may also be unreasonable if the legislative history or statutory purpose reveals that Congress would not have sanctioned such a reading. *See Chevron*, 467 U.S. at 845 ("…we should not disturb [the interpretation] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.")(quotation and citation omitted).

2. *Chevron* deference must work with the Indian canons of construction; their application is not mutually exclusive.

The Supreme Court's seminal opinion in *Chevron* allows federal agencies considerable leeway in carrying out their duties under ambiguous or incomplete statutes. Courts do not regularly second-guess agency action or decision-making when Congress has left that process to their discretion. Nevertheless, *Chevron* does not afford federal agencies carte blanche to rearrange Congress' statutory scheme or to demand deference to decisions that dramatically reshape existing law. An agency's decision must be reasonable in light of the overall purpose of the statute.

This is especially true in matters of Indian law, where federal agencies – particularly, within the Department of the Interior – serve as a fiduciary for American Indians and Indian tribes. *See Seminole Nation,* 316 U.S. at 297 ("[The Government's] conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.").

The Supreme Court has applied special canons of statutory construction in cases that pertain to the special trust relationship between the United States and American Indians. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985)("[T]he canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians."). Under these

canons of construction, federal statutes are to be liberally construed in favor of the Indians, and ambiguities are interpreted to their benefit. *Id*.

In contrast with many other federal circuits, this Circuit has held that the canons of construction ordinarily applicable in cases involving Indians do not supersede the canons of construction set forth in *Chevron*. *See Navajo Nation v. Department of Health and Human Services*, 285 F.3d 864, 870 (9th Cir. 2002)(applying *Chevron* deference to agency interpretations instead of Indian canons of statutory construction). Other circuits have chosen a different path, and held that the Indian canons of construction supersede the *Chevron* doctrine in cases where they conflict. *See*, *e.g*., *Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001)(stating that a departure from *Chevron* "arises not from ordinary exegesis, but from principles of equitable obligations and normative rules of behavior," applicable to the trust relationship between the United States and the Native American people.)(internal quotations omitted); and, *United States v. Megamania Gaming Devices*, 231 F.3d 713, 723 (10th Cir. 2000)(applying Indian canons of construction in favor of tribal interpretation of IGRA and against NIGC interpretation).

The application of these well-established canons of statutory construction need not be an "either-or" proposition. In fact, the Indian canons of statutory construction can be used to assess the reasonableness of a federal agency's

interpretation of an ambiguous statute. This Court has pointed to the Indian canons of construction before to support its review of a federal agency's interpretation of an ambiguous statute. In *Washington v. Environmental Protection Agency*, 752 F.2d 1465 (9th Cir. 1985), this Court upheld that the Environmental Protection Agency's construction of ambiguous terms in the Resource Conservation and Recovery Act in favor of Indian tribes in the State of Washington. In doing so, the Court explained, "[o]ur conclusion that the EPA construction is a reasonable one is buttressed by well-settled principles of federal Indian law." *Id*. at 1469. The next year, this Court examined whether the Bureau of Indian Affairs offered a reasonable construction of an ambiguous statute pertaining to eligibility for federal Indian education programs in *Zarr v. Barlow*, 800 F.2d 1484 (9th Cir. 1986). The Court noted that "agencies are entitled to great deference in interpreting statutes under their authority," but, "acts passed for the benefit of Indians must be liberally construed, with doubtful or ambiguous expressions resolved in the Indians' favor." *Id*. at 1486. This Court explained that the ambiguous provisions in the Indian statutes should be construed in a manner that benefits the Indians. *Id*. at 1493.

At least two other circuits have used the Indian canons of construction to augment their review of agency decisions under *Chevron*. The Second Circuit Court of Appeals has applied the Indian canons of statutory construction in concert with the *Chevron* analysis to determine whether an agency's interpretation of

ambiguous statutory language was reasonable. *See Connecticut v. Department of the Interior*, 228 F.3d 82 (2nd Cir. 2000). In that case, the Court stated, "we are cautioned to follow the general rule that doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation." *Id*. at 92. In upholding the Department of the Interior's interpretation of a tribe-specific statute, the Court explained that its application of the Indian canons of construction was bolstered by *Chevron*: "the deference we generally owe to an agency's interpretation of an ambiguous statute supports our view of this appeal." *Id*. at 93.

The D.C. Circuit Court of Appeals has been even more explicit in its hybrid application of the *Chevron* doctrine with the Indian canons of construction. For example, in *Massachusetts v. U.S. Dept. of Transp*., 93 F.3d 890 (D.C. Cir. 1996), the Court stated:

> "In such cases, traditional presumptions about the parties or the topic in dispute may limit the breadth of ambiguity and thus affect both the first and second steps of Chevron. In Native American law, for example, statutes must be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. As a result of this presumption, we have rejected agency interpretations of statutes that may have been reasonable in other contexts because the agency interpretation would not favor the Indians. ***Other time-honored canons of construction may similarly constrain the possible number of reasonable ways to read an ambiguity in a statute***, though the application of the canon alone may not suffice to make the intent of the statute sufficiently clear for the court to pronounce what Congress intended.

Id. at 893.

More recently, the D.C. Circuit addressed the tension between the *Chevron* doctrine and the Indian canons in a case out of California. *See California Valley Miwok Tribe v. U.S.*, 515 F.3d 1262 (D.C. Cir. 2008). The Court explained:

> We recognize that we typically do not apply full *Chevron* deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs….Here, however, the Secretary's proposed interpretation does not run against any Indian tribe; it runs only against one of the contestants in a heated tribal leadership dispute[.] In fact, as we later explain, the Secretary's interpretation actually advances "the trust relationship between the United States and the Native American people." Therefore, adherence to *Chevron* is consistent with the customary Indian-law canon of construction.

Id. at n.7 (citations omitted).

In a recent case, the Sixth Circuit addressed the relationship between *Chevron* and the Indian canons of construction, and suggested that the Indian canons of construction have more force where a statute is explicitly directed at Indian affairs, and that *Chevron* has more force with respect to statutes of general applicability (such as the National Labor Relations Act). *Soaring Eagle Casino & Resort v. National Labor Relations Board*, 791 F.3d 648, 673 (6th Cir. 2015).

It is clear then, that *Chevron* can co-exist with the well-established (and older) Indian canons of statutory construction. This Court may examine the Appellees' interpretation of the Frank's Landing Acts and IGRA under the

traditional *Chevron* framework while at the same time acknowledging that the Indian canons of construction may narrow the range of reasonable interpretations of a statute targeted specifically at the Frank's Landing Indian Community.

3. The 1994 Tribal List Act has no bearing on the questions presented by this case.

An agency's interpretation of a statute is unreasonable if it appears from the statute or the legislative history that Congress would not have sanctioned such a reading; or, if the agency has rendered statutory language meaningless or superfluous. *See Chevron* and *Navarro*, supra.

The 1994 Tribal List Act requires the Secretary to list 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." 25 U.S.C. § 5131. Add. at 2. But, within the 1994 Tribal List Act, the term "Indian tribe" is a defined term with a different meaning than under IGRA and other federal statutes. *See* 25 U.S.C. § 5130. Add. at 1. The 1994 Tribal List Act requires the Secretary to publish an annual list of the entities qualifying as an "Indian tribe" under the definition of that phrase, and which are also eligible for the special programs and services provided to Indians because of their status as Indians.

In the March 6, 2015 Decision, the Assistant Secretary – Indian Affairs stated that only those tribes appearing on the annual list of federally recognized

Indian tribes published pursuant to the 1994 Tribal List Act may be considered "Indian tribes" for purposes of IGRA. *See* ER Vol. II/214-15. The District Court found this interpretation of § 2703(5) to be reasonable. *See* ER Vol. I/19 ("…the congressional findings for the List Act are a strong indication that the Secretary reasonably interpreted IGRA's 'Indian tribe' definition to require recognition under the List Act."). Despite the Appellees' conclusory statements, the 1994 Tribal List Act does not allow the Secretary to rewrite the Frank's Landing Acts or IGRA.

Congress adopted separate statutory definitions of the term "Indian tribe" in IGRA and the 1994 Tribal List Act:

IGRA (25 U.S.C. § 2703(5))	**1994 Tribal List Act (25 U.S.C. § 5130)**
The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which— **(A)** is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and **(B)** is recognized as possessing powers of self-government.	The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to ***exist as an Indian tribe***. (emphasis added)

The Appellees' interpretation replaces the statutory language in the left-hand column with the statutory language in the right-hand column. The Assistant

Secretary of the Interior does not have the authority to replace that language with a completely separate statute that was adopted for a completely separate purpose. Allowing an agency official to rearrange statutory language would negate Congress' plenary legislative authority. U.S. Const. Art. I § 1 ("All legislative Powers herein shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.").

IGRA and the 1994 Tribal List Act are separate statutes adopted for separate purposes. Congress adopted IGRA with a specific purpose in mind: to provide a statutory basis for the regulation of gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[.]" 25 U.S.C. § 2702(1). Add. at 18. The 1994 Tribal List Act, meanwhile, was adopted with a more general purpose: to ensure that the Secretary of the Interior published a list of all federally recognized Indian tribes on an annual basis; and, to remedy confusion about the status of certain groups in light of the Secretary's irregular publication of such lists before 1994.[13] *See* H.R. Rep. 103-780.

Early in 1994, Congress adopted amendments to the Indian Reorganization Act, 25 U.S.C. ch. 14, subch. V § et seq. (the "IRA") to ensure that all federally recognized Indian tribes enjoyed the same privileges and immunities under federal

[13] Prior to enactment of the 1994 Tribal List Act, the Secretary was required to publish an annual list of all federally recognized Indian tribes pursuant to administrative regulation. H.R. Rep. 103-780 at 3 (citing 25 C.F.R. § 83.5).

law. Pub. L. No. 103-263, 25 U.S.C. § 5123(f)-(g)(prohibiting federal agencies from diminishing the privileges and immunities of one Indian tribe vis-à-vis another tribe). These amendments were intended to prevent federal agencies from granting some federally recognized Indian tribes a greater scope of privileges and immunities than others. *See* Statement of Congressman Richardson on the consideration of S. 1654, Cong. Rec. H3803 (May 23, 1994)("The Congress has never acknowledged distinctions in or classifications on inherent sovereignty possessed by federally recognized Indian tribes."). The 1994 Tribal List Act was a continuation of Congress' effort to prevent the BIA from engaging in disparate treatment of federally recognized Indian tribes. In the report accompanying the 1994 Tribal List Act, Congress stated:

> While the Department clearly has a role in extending recognition to previously unrecognized tribes, it does not have the authority to "derecognize" a tribe. However, the Department has shown a disturbing tendency in this direction. Twice this Congress, the Bureau of Indian Affairs (BIA) has capriciously and improperly withdrawn federal recognition from a native group or leader.
>
> ***
>
> ***This growing and disturbing trend prompted the introduction of H.R. 4180 [the 1994 List Act].***

H.R. Rep. 103-780 at 3 (emphasis added).

The 1994 Tribal List Act does not purport to vest or create substantive rights for Indian tribes. To the contrary, Congress stated in its findings that Indian tribes

are recognized by Congress, the Secretary (in accordance with federal regulations), and by the courts. Pub. L. No. 103-454 (November 2, 1994) (Add. at 1). Indian tribes that appear on the annual list of federally recognized Indian tribes are those that are recognized as entitled to the full scope of privileges and immunities protected by 25 U.S.C. § 5123. Tribal groups and organizations that do not appear on the list are not. The Department of the Interior stated as much in 1995 when it published its first list of federally recognized Indian tribes after passage of the 1994 Tribal List Act:

> The listed entities are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged 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.

60 Fed. Reg. 9,250-51 (Feb. 16, 1995). The Secretary's regulations governing the tribal recognition process further illustrate this point. *See* 25 C.F.R. § 83.46(a)("Upon acknowledgment, the petitioner will be a federally recognized Indian tribe entitled to the privileges and immunities available to federally recognized Indian tribes.").

Congress adopted IGRA and the 1994 Tribal List Act to address two completely separate issues, which is reflected in the differing statutory language that it used to define the term "Indian tribe." The 1994 Tribal List Act was adopted to address a broad problem regarding the Secretary's disparate treatment

of Indian tribes, and the failure to consistently identify which groups were entitled to the full scope of privileges and immunities vested in federally recognized Indian tribes.

IGRA is a much narrower statute, which is aimed at promoting economic self-sufficiency and regulating gaming on Indian lands. The Appellees' attempt to replace IGRA's specific language with the 1994 Tribal List Act's broad language runs afoul of Congress' plenary authority over legislation, as well as the longstanding rule that a later-enacted general statute will not control the interpretation of an earlier-enacted specific statute. *See Morton v. Mancari*, 417 U.S. 535, 551 (1974)("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.")(quotations and citations omitted); and, *Radlax Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2070-71 (2012)("[I]t is a commonplace of statutory construction that the specific governs the general. That is particularly true where…Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.")(quotations and citations omitted).

4. The Appellees' interpretation of the Frank's Landing Acts and IGRA was unreasonable.

As explained above, Congress recognized the Community's unique legal status using nearly the exact same language it used to define the term "Indian

tribe" in IGRA. To the extent that this language is ambiguous (it is not), the Appellees must interpret that language in a reasonable manner that is consistent with Congress' purpose. They have not.

Congress has twice recognized the Community's unique legal status through legislative enactments. Each time that Congress recognized the Community, it did so to clarify that the Community was eligible for the special programs and services provided by the Federal Government to Indians because of their status as Indians, and to affirm that the Community is self-governing. The 1994 Frank's Landing Act makes it clear that the Community has all of the sovereign powers necessary to engage in economic development to support its own government. *See Gregoire*, 649 F. Supp. 2d at 1210 ("Congress clearly intended with the enactment of [the Frank's Landing Acts] for the Community to be given limited sovereign powers, as a dependent Indian Community, in order to sustain its governmental programs…").

The Appellees have interpreted the Frank's Landing Acts in a manner that constrains the Community's ability to generate revenues to support its own government beyond the scope Congress intended. The Appellee's contort and rearrange statutory language to accomplish this feat. First, they find different meanings in the same precise language appearing in the Frank's Landing Acts and IGRA. Then, the Appellees replace IGRA's definition of the term "Indian tribe" with the 1994 Tribal List Act's definition of that term. Finally, the Appellees assert

that the Community cannot satisfy IGRA's new definition of the term "Indian tribe."

It is true that, under *Chevron*, courts generally defer to an agency's interpretation of an ambiguous statute. But, a federal agency is not entitled to deference as a matter of right. It must offer a reasonable interpretation of the statute that is not at odds with congressional intent. An agency's interpretation must be consistent with congressional intent, and cannot render superfluous important statutory language.

Moreover, the Supreme Court has recently reined-in the application of *Chevron* deference in cases like this one, where the question at issue is central to the statutory scheme, or where agency expertise is not germane to filling in a gap in the statute at issue. *King v. Burwell*, 135 S. Ct. 2480, 2488-89 (2015)(refusing to interpret Affordable Care Act to require deference to Internal Revenue Agency interpretation regarding entitlement to related tax credits); *see also Valenzuela Gallardo v. Lynch*, 818 F.3d 808, 816 n.4 (9th Cir. 2016)(acknowledging *King v. Burwell* limits *Chevron* deference beyond constitutional avoidance exception); *United States Telecom Ass'n v. Federal Communications Commission*, 855 F.3d 381, 421, n.2 (D.C. Cir. 2017) (dissenting opinion); *Community Health Systems, Inc. v. Burwell*, 113 F. Supp. 3d 197, 212 n.11 (D. D.C. 2017). Significantly, Justice Gorsuch, who was not on the Supreme Court at the time *King v. Burwell*

was decided, while a member of the Tenth Circuit Appeals expressed serious and extensive reservations regarding an expansive interpretation of *Chevron* deference. *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1149-58 (10th Cir. 2016)(concurring opinion).

In *Gregoire*, the District Court acknowledged that the Frank's Landing Acts and IGRA share similar objectives: "This holding is consistent with the federal government's policy of promoting Indian self-reliance and government. *See, e.g.,* Indian Gaming Regulation Act [sic]." 649 F. Supp. 2d at 1210.

Separately, the 1994 Tribal List Act was adopted to consistently identify which groups were entitled to the full scope of privileges and immunities vested in federally recognized Indian tribes. The Appellees have replaced IGRA's definition of "Indian tribe" with the definition used in a different statute – the 1994 Tribal List Act – and enacted for an entirely different purpose.

The Community readily admits that it is not entitled to the full scope of privileges and immunities afforded to federally recognized Indian tribes. There are limits and qualifications to the Community's sovereign powers that are not applicable to federally recognized Indian tribes.[14] But, none of these constraints

[14] For example, the Court in *Gregoire* noted that the Community "has no sovereign power to tax[.]" 649 F. Supp. 2d at 1207. As a self-governing dependent Indian community, the scope of the Community's civil and criminal jurisdiction over non-members could also be construed. It is not necessary to define the outer boundary of the Community's powers in this case.

would prevent the Community from regulating its own gaming operations in accordance with IGRA, or from engaging in class II gaming under IGRA. The Community is clearly vested with sovereign powers necessary to govern itself, including the ability to raise revenues to support the exercise of those powers.

The March 6, 2015 Decision reads-out IGRA's definition of "Indian tribe" in its entirety. *See* ER Vol. II/212-13. It also negates Congress' recognition of the Community as a self-governing dependent Indian community that is eligible for the special programs and services provided by the Federal Government to Indians. Finally, it renders superfluous Congress' prohibition against class III gaming by the Community in the 1994 Frank's Landing Act (Add. at 7).

The unreasonable nature of the Appellees' interpretation is apparent from the leaps of logic it uses to limit the scope of the Frank's Landing Acts and to amend key definitions in IGRA. The Indian canons of statutory construction further support this point.

Under those canons of statutory construction, ambiguous statutory language must be understood as Indians would have understood it. The Frank's Landing Acts were clearly intended to make the Community eligible for Indian programs and services, ***and*** to protect its ability to govern itself. The District Court in *Gregoire* understood that the Community's self-governing status necessarily entails the ability to generate government revenues. In 1994, at the time Congress

reaffirmed the Community's unique legal status, Indian gaming was a recognized, regulated, and legitimate method by which Indians generated revenues for self-government. In fact, Congress rejected a proposed amendment to prohibit the Community from engaging in all forms of gaming activity under IGRA. DOI AR 0159-0160 (citing Cong. Rec. Volume 140, Issue 144 (Oct. 6, 1994). The Community understood the Frank's Landing Acts as recognizing its ability to engage in class II gaming, and the Appellees' own attorneys have acknowledged that this understanding of the Frank's Landing Acts is reasonable:

> [We] recognize that there could be an argument that Frank's Landing is a tribal organization that uniquely falls within the definition of "tribe" only for purposes of Class I and Class II gaming under IGRA.

DOI AR 0078 (Memorandum from Scott Keep, Senior Counsel to Kevin Washburn, Assistant Secretary – Indian Affairs (March 3, 2015)).

The Community's understanding of the Frank's Landing Acts and IGRA is reasonable, as the Appellees have acknowledged. To the contrary, the Appellees have offered a reading of these statutes that amends congressional enactments by bureaucratic fiat, renders important language superfluous, and subverts the overriding purpose of three different statutes. Therefore, the Appellees' reading is unreasonable.

CONCLUSION

Congress meant what it said when it recognized the Community using nearly the exact same language it used to define the term "Indian tribe" in IGRA. Therefore, the Community is an "Indian tribe" within IGRA's unambiguous definition of that term.

For those reasons, and the reasons set forth above, the Community respectfully requests that this Court reverse the District Court's order granting summary judgment to the Appellees, and direct the District Court to enter a judgment in the Community's favor claims for declaratory and injunctive relief.

Dated: August 10, 2017

Respectfully submitted,

s/ Scott Crowell
SCOTT CROWELL
Crowell Law Office-Tribal Advocacy Group
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5107
Email: scottcrowell@hotmail.com

Bryan T. Newland
Fletcher Law, PLLC
909 Abbott Road, Suite F
East Lansing, MI 48823
Tel: (517) 862-5570
Email:
bnewland@fletcherlawpllc.com

Alan S. Middleton
Law Offices of Alan S. Middleton, PLLC
18550 43rd Ave, NE
Lake Forest Park, WA 98155
Tel: (206) 533-0490
Email:
alanscottmiddleton@comcast.net

Attorneys for Appellant

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, I state that there are no related cases pending in this Court.

Dated: August 10, 2017

s/ Scott Crowell
SCOTT CROWELL
(WSBA No. 18868)
CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13, 514 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2011 in 14-point Times New Roman type.

Dated: August 10, 2017

s/ Scott Crowell
SCOTT CROWELL
(WSBA No. 18868)
CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com

CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 10, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 10, 2017

s/ Scott Crowell
SCOTT CROWELL
(WSBA No. 18868)
CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com

No. 17-35368

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK'S LANDING INDIAN COMMUNITY, a federally recognized Indian Tribe,

Plaintiff/Appellant,

v.

NATIONAL INDIAN GAMING COMMISSION; JONODEV CHAUDHURI, in his official capacity as Chairman of the National Indian Gaming Commission; UNITED STATES DEPARTMENT OF THE INTERIOR; MICHAEL BLACK, in his official capacity as Acting Assistant Secretary of the Interior-Indian Affairs, RYAN K. ZINKE, in his official capacity as the Secretary of the Interior,

Defendants/Appellees.

Appeal From a Decision of the United States District Court for the Western District Of Washington, No.: 3:15-cv-05828-BHS – Honorable Benjamin H. Settle

APPELLANT FRANK'S LANDING INDIAN COMMUNITY ADDENDUM TO OPENING BRIEF

Scott Crowell
Crowell Law Office-Tribal Advocacy Group
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5107
Email: scottcrowell@hotmail.com

Bryan T. Newland
Fletcher Law, PLLC
909 Abbott Road, Suite F
East Lansing, MI 48823
Tel: (517) 862-5570
Email: bnewland@fletcherlawpllc.com

Alan S. Middleton
Law Offices of Alan S. Middleton, PLLC
18550 43rd Ave, NE
Lake Forest Park, WA 98155
Tel: (206) 533-0490
Email: alanscottmiddleton@comcast.net

Attorneys for Appellant

ADDENDUM
(Pages 1-36)

Public Law 103-454
103d Congress

An Act

To provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes.

Nov. 2, 1994
[H.R. 4180]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WITHDRAWAL OF ACKNOWLEDGEMENT OR RECOGNITION

Federally Recognized Indian Tribe List Act of 1994.

SEC. 101. SHORT TITLE.

25 USC 479a note.

This title may be cited as the "Federally Recognized Indian Tribe List Act of 1994".

SEC. 102. DEFINITIONS.

25 USC 479a.

For the purposes of this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term "list" means the list of recognized tribes published by the Secretary pursuant to section 104 of this title.

SEC. 103. FINDINGS.

25 USC 479a note.

The Congress finds that—

(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court;

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 USC 479a-1. Federal Register, publication.

SEC. 104. PUBLICATION OF LIST OF RECOGNIZED TRIBES.

(a) PUBLICATION OF THE LIST.—The Secretary shall publish in the Federal Register 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.

(b) FREQUENCY OF PUBLICATION.—The list shall be published within 60 days of enactment of this Act, and annually on or before every January 30 thereafter.

Tlingit and Haida Status Clarification Act.

TITLE II—CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

25 USC 1212 note.

SEC. 201. SHORT TITLE.

This title may be cited as the "Tlingit and Haida Status Clarification Act".

25 USC 1212.

SEC. 202. FINDINGS.

The Congress finds and declares that—

(1) the United States has acknowledged the Central Council of Tlingit and Haida Indian Tribes of Alaska pursuant to the Act of June 19, 1935 (49 Stat. 388, as amended, commonly referred to as the "Jurisdiction Act"), as a federally recognized Indian tribe;

(2) on October 21, 1993, the Secretary of the Interior published a list of federally recognized Indian tribes pursuant to part 83 of title 25 of the Code of Federal Regulations which omitted the Central Council of Tlingit and Haida Indian Tribes of Alaska;

(3) the Secretary does not have the authority to terminate the federally recognized status of an Indian tribe as determined by Congress;

(4) the Secretary may not administratively diminish the privileges and immunities of federally recognized Indian tribes without the consent of Congress; and

(5) the Central Council of Tlingit and Haida Indian Tribes of Alaska continues to be a federally recognized Indian tribe.

25 USC 1213.

SEC. 203. REAFFIRMATION OF TRIBAL STATUS.

The Congress reaffirms and acknowledges that the Central Council of Tlingit and Haida Indian Tribes of Alaska is a federally recognized Indian tribe.

SEC. 204. DISCLAIMER. 25 USC 1214.

(a) IN GENERAL.—Nothing in this title shall be interpreted to diminish or interfere with the government-to-government relationship between the United States and other federally recognized Alaska Native tribes, nor to vest any power, authority, or jurisdiction in the Central Council of Tlingit and Haida Indian Tribes of Alaska over other federally recognized Alaska Native tribes.

(b) CONSTITUTION OF CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA.—Nothing in this title shall be construed as codifying the Constitution of the Central Council of the Tlingit and Haida Indian Tribes of Alaska into Federal law.

SEC. 205. PROHIBITION AGAINST DUPLICATIVE SERVICES. 25 USC 1215.

Other federally recognized tribes in Southeast Alaska shall have precedence over the Central Council of Tlingit and Haida Indian Tribes of Alaska in the award of a Federal compact, contract or grant to the extent that their service population overlaps with that of the Central Council of Tlingit and Haida Indian tribes of Alaska. In no event shall dually enrolled members result in duplication of Federal service funding.

TITLE III—PASKENTA BAND OF NOMLAKI INDIANS OF CALIFORNIA

Paskenta Band Restoration Act.

SEC. 301. SHORT TITLE. 25 USC 1300m note.

This title may be cited as the "Paskenta Band Restoration Act".

SEC. 302. DEFINITIONS. 25 USC 1300m.

For purposes of this title:

(1) The term "Tribe" means the Paskenta Band of Nomlaki Indians of the Paskenta Rancheria of California.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Interim Council" means the governing body of the Tribe specified in section 307.

(4) The term "member" means an individual who meets the membership criteria under section 306(b).

(5) The term "State" means the State of California.

(6) The term "reservation" means those lands acquired and held in trust by the Secretary for the benefit of the Tribe pursuant to section 305.

(7) The term "service area" means the counties of Tehama and Glenn, in the State of California.

SEC. 303. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES. 25 USC 1300m-1.

(a) FEDERAL RECOGNITION.—Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this title, all laws and regulations of general application to Indians and nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this title shall be applicable to the Tribe and its members.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—Except as provided in subsection (d), all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement,

or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85-671; 72 Stat. 619), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after the date of enactment of this Act.

(c) FEDERAL SERVICES AND BENEFITS.—Without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after the date of enactment of this Act, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

(d) HUNTING, FISHING, TRAPPING, AND WATER RIGHTS.—Nothing in this title shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.

(e) INDIAN REORGANIZATION ACT APPLICABILITY.—The Act of June 18, 1934 (25 U.S.C. 461 et seq.), shall be applicable to the Tribe and its members.

(f) CERTAIN RIGHTS NOT ALTERED.—Except as specifically provided in this title, nothing in this title shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

25 USC 1300m-2.

SEC. 304. ECONOMIC DEVELOPMENT.

(a) PLAN FOR ECONOMIC DEVELOPMENT.—The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;

(2) in accordance with this section and not later than two years after the adoption of a tribal constitution as provided in section 308, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

(b) RESTRICTIONS.—Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) shall be consistent with the requirements of section 305.

25 USC 1300m-3.

SEC. 305. TRANSFER OF LAND TO BE HELD IN TRUST.

(a) LANDS TO BE TAKEN IN TRUST.—The Secretary shall accept any real property located in Tehama County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims to such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(b) LANDS TO BE PART OF THE RESERVATION.—Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe and shall be part of the Tribe's reservation.

25 USC 1300m-4.

SEC. 306. MEMBERSHIP ROLLS.

(a) COMPILATION OF TRIBAL MEMBERSHIP ROLL.—Within one year after the date of the enactment of this Act, the Secretary

shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) CRITERIA FOR MEMBERSHIP.—(1) Until a tribal constitution is adopted pursuant to section 308, an individual shall be placed on the membership roll if such individual is living, is not an enrolled member of another federally recognized Indian tribe, is of Nomlaki Indian ancestry, and if—

(A) such individual's name was listed on the Paskenta Indian Rancheria distribution roll compiled on February 26, 1959, by the Bureau of Indian Affairs and approved by the Secretary of the Interior on July 7, 1959, pursuant to Public Law 85–671;

(B) such individual was not listed on the Paskenta Indian Rancheria distribution list, but met the requirements that had to be met to be listed on the Paskenta Indian Rancheria list;

(C) such individual is identified as an Indian from Paskenta in any of the official or unofficial rolls of Indians prepared by the Bureau of Indian Affairs; or

(D) such individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A), (B), or (C).

(2) After adoption of a tribal constitution pursuant to section 308, such tribal constitution shall govern membership in the Tribe.

(c) CONCLUSIVE PROOF OF PASKENTA INDIAN ANCESTRY.—For the purpose of subsection (b), the Secretary shall accept any available evidence establishing Paskenta Indian ancestry. The Secretary shall accept as conclusive evidence of Paskenta Indian ancestry, information contained in the census of the Indians in and near Paskenta, prepared by Special Indian Agent John J. Terrell, in any other roll or census of Paskenta Indians prepared by the Bureau of Indian Affairs, and in the Paskenta Indian Rancheria distribution list, compiled by the Bureau of Indian Affairs on February 26, 1959.

John J. Terrell.

SEC. 307. INTERIM GOVERNMENT.

25 USC 1300m–5.

Until a new tribal constitution and bylaws are adopted and become effective under section 308, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Tribal Council of the Tribe on the date of the enactment of this Act, and the Interim Council shall continue to operate in the manner prescribed for the Tribal Council under the tribal constitution adopted December 18, 1993. Any new members filling vacancies on the Interim Council shall meet the membership criteria set forth in section 306(b) and be elected in the same manner as are Tribal Council members under the tribal constitution adopted December 18, 1993.

SEC. 308. TRIBAL CONSTITUTION.

25 USC 1300m–6.

(a) ELECTION; TIME AND PROCEDURE.—Upon the completion of the tribal membership roll under section 306(a) and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held according to section 16 of the Act of June 18, 1934 (25 U.S.C. 476), except that absentee balloting shall be permitted regardless of voter residence.

(b) ELECTION OF TRIBAL OFFICIALS; PROCEDURES.—Not later than 120 days after the Tribe adopts a constitution and bylaws under subsection (a), the Secretary shall conduct an election by

secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted according to the procedures specified in subsection (a) except to the extent that such procedures conflict with the tribal constitution.

25 USC 1300m-7.

SEC. 309. GENERAL PROVISION.

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this title.

Approved November 2, 1994.

LEGISLATIVE HISTORY—H.R. 4180:

HOUSE REPORTS: No. 103-781 (Comm. on Natural Resources).
CONGRESSIONAL RECORD, Vol. 140 (1994):
Oct. 3, considered and passed House.
Oct. 7, considered and passed Senate, amended.
Oct. 8, Senate vitiated passage; reconsidered and passed Senate.

Public Law 103-435
103d Congress

An Act

Nov. 2, 1994
[H.R. 4709]

To make certain technical corrections, and for other purposes.

Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASING AUTHORITY OF THE INDIAN PUEBLO FEDERAL DEVELOPMENT CORPORATION.

Notwithstanding the provisions of section 17 of the Act of June 18, 1934 (48 Stat. 988, chapter 576; 25 U.S.C. 477), the Indian Pueblo Federal Development Corporation, whose charter was issued pursuant to such section by the Secretary of the Interior on January 15, 1993, shall have the authority to lease or sublease trust or restricted Indian lands for up to 50 years.

SEC. 2. GRAND RONDE RESERVATION ACT.

(a) LANDS DESCRIBED.—Section 1 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes", approved September 9, 1988 (102 Stat. 1594), is amended—

25 USC 713f note.

(1) in subsection (c)—

(A) by striking "9,879.65" and inserting "10,120.68"; and

(B) by striking all after

"6	8	1	SW¼SW¼,W½SE¼SW¼	53.78"

and inserting the following:

"6	8	1	S½E½SE¼SW¼	10.03
6	7	8	Tax lot 800	5.55
4	7	30	Lots 3, 4, SW¼NE¼, SE¼NW¼,E½SW¼	240
			Total	10,120.68.";

and

(2) by adding at the end the following new subsection:

"(d) CLAIMS EXTINGUISHED; LIABILITY.—

"(1) CLAIMS EXTINGUISHED.—All claims to lands within the State of Oregon based upon recognized title to the Grand Ronde Indian Reservation established by the Executive order of June 30, 1857, pursuant to treaties with the Kalapuya, Molalla, and other tribes, or any part thereof by the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor in interest, are hereby extinguished, and any trans-

fers pursuant to the Act of April 28, 1904 (Chap. 1820; 33 Stat. 567) or other statute of the United States, by, from, or on behalf of the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor interest, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including, but not limited to, the Act of July 22, 1790, commonly known as the 'Trade and Intercourse Act of 1790' (1 Stat. 137, chapter 33, section 4)).

"(2) LIABILITY.—The Tribe shall assume responsibility for lost revenues, if any, to any county because of the transfer of revested Oregon and California Railroad grant lands in section 30, Township 4 South, Range 7 West.".

(b) CIVIL AND CRIMINAL JURISDICTION.—Section 3 of such Act (102 Stat. 1595) is amended by adding at the end the following: "Such exercise shall not affect the Tribe's concurrent jurisdiction over such matters.". 25 USC 713f note.

SEC. 3. CONFEDERATED TRIBES OF THE SILETZ INDIANS OF OREGON.

Section 2 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon, approved September 4, 1980 (Public Law 96-340; 94 Stat. 1072) is amended— 25 USC 711 note.

(1) by inserting "(a)" after "SEC. 2."; and

(2) by adding at the end the following:

"(b)(1) The Secretary of the Interior, acting at the request of the Confederated Tribes of the Siletz Indians of Oregon, shall accept (subject to all valid rights-of-way and easements existing on the date of such request) any appropriate warranty deed conveying to the United States in trust for the Confederated Tribes of the Siletz Indians of Oregon, contingent upon payment of all accrued and unpaid taxes, the following parcels of land located in Lincoln County, State of Oregon:

"(A) In Township 10 South, Range 8 West, Willamette Meridian—

"(i) a tract of land in the northwest and the northeast quarters of section 7 consisting of 208.50 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990; and

"(ii) 3 tracts of land in section 7 consisting of 18.07 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990.

"(B) In Township 10 South, Range 10 West, Willamette Meridian—

"(i) a tract of land in section 4, including a portion of United States Government Lot 31 lying west and south of the Siletz River, consisting of 15.29 acres, more or less, conveyed to the Tribe by warranty deed from Patrick J. Collson and Patricia Ann Collson on February 27, 1991;

"(ii) a tract of land in section 9, located in Tract 60, consisting of 4.00 acres, more or less, conveyed to the Tribe by contract of sale from Gladys M. Faulkner on December 9, 1987;

"(iii) a tract of land in section 9, including portions of the north one-half of United States Government Lot

15, consisting of 7.34 acres, more or less, conveyed to the Tribe by contract of sale from Clayton E. Hursh and Anna L. Hursh on December 9, 1987;

"(iv) a tract of land in section 9, including a portion of the north one-half of United States Government Lot 16, consisting of 5.62 acres, more or less, conveyed to the Tribe by warranty deed from Steve Jebert and Elizabeth Jebert on December 1, 1987;

"(v) a tract of land in the southwest quarter of the northwest quarter of section 9, consisting of 3.45 acres, more or less, conveyed to the Tribe by warranty deed from Eugenie Nashif on July 11, 1988; and

"(vi) a tract of land in section 10, including United States Government Lot 8 and portions of United States Government Lot 7, consisting of 29.93 acres, more or less, conveyed to the Tribe by warranty deed from Doyle Grooms on August 6, 1992.

"(C) In the northwest quarter of section 2 and the northeast quarter of section 3, Township 7 South, Range 11 West, Willamette Meridian, a tract of land comprising United States Government Lots 58, 59, 63, and 64, Lincoln Shore Star Resort, Lincoln City, Oregon.

"(2) The parcels of land described in paragraph (1), together with the following tracts of lands which have been conveyed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon—

"(A) a tract of land in section 3, Township 10 South, Range 10 West, Willamette Meridian, including portions of United States Government Lots 25, 26, 27, and 28, consisting of 49.35 acres, more or less, conveyed by the Siletz Tribe to the United States in trust for the Tribe on March 15, 1986; and

"(B) a tract of land in section 9, Township 10 South, Range 10 West, Willamette Meridian, including United States Government Lot 33, consisting of 2.27 acres, more or less, conveyed by warranty deed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon from Harold D. Alldridge and Sylvia C. Alldridge on June 30, 1981;

shall be subject to the limitations and provisions of sections 3, 4, and 5 of this Act and shall be deemed to be a restoration of land pursuant to section 7 of the Siletz Indian Tribe Restoration Act (25 U.S.C. 711(e)).

"(3) Notwithstanding any other provision of law, the United States should not incur any liability for conditions on any parcels of land taken into trust under this section.

"(4) As soon as practicable after the transfer of the parcels provided in paragraphs (1) and (2), the Secretary of the Interior shall convey such parcels and publish a description of such lands in the Federal Register.".

SEC. 4. TRANSFER OF PARCEL BY YSLETA DEL SUR PUEBLO.

(a) RATIFICATION.—The transfer of the land described in subsection (b), together with fixtures thereon, on July 12, 1991, by the Ysleta Del Sur Pueblo is hereby ratified and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including section 2116 of the Revised

Statutes (25 U.S.C. 177)) as if Congress had given its consent prior to the transfer.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are more particularly described as follows:

Tract 1–B–1 (1.9251 acres) and Tract 1–B–2–A (0.0748 acres), Block 2 San Elizario, El Paso County, Texas.

SEC. 5. AUTHORIZATION FOR 99-YEAR LEASES.

The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415(a)) is amended by inserting "the Viejas Indian Reservation," after "Soboba Indian Reservation,".

SEC. 6. WIND RIVER INDIAN IRRIGATION PROJECT.

Funds appropriated for construction of the Wind River Indian Irrigation Project for fiscal year 1990 (pursuant to Public Law 101–121), fiscal year 1991 (pursuant to the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101–512)), and fiscal year 1992 (pursuant to the Department of the Interior and Related Agencies Appropriations Act, 1992 (Public Law 102–154)) shall be made available on a nonreimbursable basis.

SEC. 7. REIMBURSEMENT OF COSTS INCURRED BY GILA RIVER INDIAN COMMUNITY FOR CERTAIN RECLAMATION CONSTRUCTION.

The Secretary of the Interior is authorized to pay $1,842,205 to the Gila River Indian Community as reimbursement for the costs incurred by the Gila River Indian Community for construction allocated to irrigation on the Sacaton Ranch that would have been nonreimbursable if such construction had been performed by the Bureau of Reclamation under section 402 of the Colorado River Basin Project Act (43 U.S.C. 1542).

SEC. 8. RECOGNITION OF INDIAN COMMUNITY.

Section 10 of the Indian Law Technical Amendments of 1987 (Public Law 100–153) is amended— 101 Stat. 889.

(1) by striking "The Frank's" and inserting "(a) Subject to subsection (b), the Frank's";

(2) by striking "recognized as eligible" and inserting the following:

"recognized—

"(1) as eligible";

(3) by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(2) as a self-governing dependent Indian community that is not subject to the jurisdiction of any federally recognized tribe.

"(b)(1) Nothing in this section may be construed to alter or affect the jurisdiction of the State of Washington under section 1162 of title 18, United States Code.

"(2) Nothing in this section may be construed to constitute the recognition by the United States that the Frank's Landing Indian Community is a federally recognized Indian tribe.

"(3) Notwithstanding any other provision of law, the Frank's Landing Indian Community shall not engage in any class III gaming

activity (as defined in section 3(8) of the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2703(8))).".

SEC. 9. RECONVEYANCE OF CERTAIN EXCESS LANDS.

(a) IN GENERAL.—The Congress finds that the Sac and Fox Nation of Oklahoma has determined the lands described in subsection (b) to be excess to their needs and should be returned to the original Indian grantors or their heirs. The Secretary of the Interior is authorized to accept transfer of title from the Sac and Fox Nation of Oklahoma of its interest in the lands described in subsection (b).

(b) PERSONS AND LANDS.—The lands and individuals referred to in subsection (a) are as follows:

(1) To the United States of America in trust for Sadie Davis, now Tyner, or her heirs or devisees, the Surface and Surface Rights only in and to the SE¼SE¼SE¼SE¼ of section 28, Township 17 North, Range 6 East of the Indian Meridian, Lincoln County, Oklahoma, containing 2.50 acres, more or less.

(2) To the United States of America in trust for Mabel Wakole, or her heirs or devisees, the Surface and Surface Rights only in and to the NE¼NE¼ of Lot 6 of NW¼ of section 14, Township 11 North, Range 4 East of the Indian Meridian, Pottawatomie County, Oklahoma, containing 2.50 acres, more or less.

SEC. 10. TITLE I OF PUBLIC LAW 97-459, PERTAINING TO THE DEVILS LAKE SIOUX TRIBE.

Paragraph (1) of section 108(a) of title I of Public Law 97-459 (96 Stat. 2515) is amended by striking out "of the date of death of the decedent" and inserting in lieu thereof "after the date on which the Secretary's determination of the heirs of the decedent becomes final".

SEC. 11. NORTHERN CHEYENNE LAND TRANSFER.

(a) IN GENERAL.—Notwithstanding any contrary provision of law, the Secretary of the Interior or an authorized representative of the Secretary (referred to in this section as the "Secretary") is hereby authorized and directed to transfer by deed to Lame Deer High School District No. 6, Rosebud County, Montana (referred to in this section as the "School District"), all right, title, and interest of the United States and the Northern Cheyenne Tribe (referred to in this section as the "Tribe") in and to the lands described in this subsection (referred to in this section as "Subject Lands"), to be held and used by the School District for the exclusive purpose of constructing and operating thereon a public high school and related facilities. The Subject Lands consist of a tract of approximately 40 acres within the Northern Cheyenne Indian Reservation, more particularly described as follows:

A tract of land located in the W½SE¼ and the E½SW¼ of section 10, Township 3 South, Range 41 East, M.P.M., described as follows: Beginning at the south ¼ corner of said section 10, thence south 89 degrees 56 minutes west 393.31 feet on and along the south line of said section 10 to the true point of beginning, thence south 89 degrees 56 minutes west 500.0 feet on and along said section line, thence north 00 degrees 00 minutes east, 575.0 feet, thence north 54 degrees 9 minutes 22 seconds east 2382.26 feet, thence south 23 degrees 44 minutes 21 seconds east 622.56 feet, thence south 51 degrees

14 minutes 40 seconds west 2177.19 feet to the true point of beginning, containing in all 40.0 acres, more or less.

(b) DEED AND LEASE.—

(1) IN GENERAL.—The deed issued under this section shall provide that—

(A) title to all coal and other minerals, including oil, gas, and other natural deposits, within the Subject Lands shall remain in the Secretary in trust for the Tribe, as provided in Public Law 90-424 (82 Stat. 424);

(B) the Subject Lands may be used for the purpose of constructing and operating a public high school and related facilities thereon, and for no other purpose;

(C) title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe, and the deed shall be of no further force or effect, if, within 8 years after the date of the deed, classes have not commenced in a permanent public high school facility established on the Subject Lands, or if such classes commence at the facility within such 8-year period, but the facility subsequently permanently ceases operating as a public high school; and

(D) at any time after the conclusion of the current litigation (commenced before the date of enactment of this Act and including all trial and, if any, appellate proceedings) challenging the November 9, 1993, decision of the Superintendent of Public Instruction for the State of Montana granting the petition to create the School District, and with the prior approval of the Superintendent of Public Instruction (referred to in this section as the "Superintendent's Approval"), the Tribe shall have the right to replace the deed with a lease covering the Subject Lands issued under section 1(a) of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415(a)) having a term of 25 years, with a right to renew for an additional 25 years.

(2) CONDITIONS OF LEASE.—Under the lease referred to in paragraph (1)(D), the Subject Lands shall be leased rent free to the School District for the exclusive purpose of constructing and operating a public high school and related facilities thereon. The lease shall terminate if, within 8 years after the date of the deed, classes have not commenced in a permanent public high school facility established on the Subject Lands, or if such classes commence at the facility within such 8-year period, but the facility subsequently permanently ceases operating as a public high school. In the event the Tribe seeks and obtains the Superintendent's Approval, the Tribe may tender a lease, signed by the Tribe and approved by the Secretary, which complies with the provisions of this subsection. Upon such tender, the deed shall be of no further force or effect, and, subject to the leasehold interest offered to the School District, title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe. The Tribe may at any time irrevocably relinquish the right provided to it under this subsection by resolution of the Northern Cheyenne Tribal Council explicitly so providing.

(c) EFFECT OF ACCEPTANCE OF DEED.—Upon the School District's acceptance of a deed delivered under this section, the School

District, and any party who may subsequently acquire any right, title, or interest of any kind whatsoever in or to the Subject Lands by or through the School District, shall be subject to, be bound by, and comply with all terms and conditions set forth in subparagraphs (A) through (D) of subsection (b)(1).

SEC. 12. INDIAN AGRICULTURE AMENDMENT.

(a) LEASING OF INDIAN AGRICULTURAL LANDS.—Section 105 of the American Indian Agriculture Resource Management Act (25 U.S.C. 3715) is amended—

(1) in subsection (b)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) shall approve leases and permits of tribally owned agricultural lands at rates determined by the tribal governing body."; and

(2) in subsection (c), amending paragraph (1) to read as follows:

"(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.".

(b) TRIBAL IMMUNITY.—The American Indian Agriculture Resource Management Act (25 U.S.C. 3701 et seq.) is amended by adding at the end the following new section:

25 USC 3746.

"SEC. 306. TRIBAL IMMUNITY.

"Nothing in this Act shall be construed to affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.".

SEC. 13. SAN CARLOS APACHE WATER RIGHTS SETTLEMENT ACT OF 1992.

25 USC 390 note.

Section 3711(b)(1) of title XXXVII of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking "December 31, 1994" and inserting "December 31, 1995".

SEC. 14. RELATIONSHIP BETWEEN BUY INDIAN ACT AND MENTOR-PROTEGE PROGRAM.

Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47; commonly referred to as the "Buy Indian Act"), is amended by adding at the end the following: "Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of this section—

"(1) no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assist-

ance described in subsection (f) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note); and

"(2) the terms 'protege firm' and 'mentor firm' have the meaning given such terms in subsection (c) of such section 831.".

SEC. 15. ACQUISITION OF LANDS ON WIND RIVER RESERVATION. 25 USC 574a.

(a) AUTHORITY TO HOLD LANDS IN TRUST FOR THE INDIVIDUAL TRIBE.—The Secretary of the Interior is hereby authorized to acquire individually in the name of the United States in trust for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation or the Northern Arapaho Tribe of the Wind River Reservation, as appropriate, lands or other rights when the individual assets of only one of the tribes is used to acquire such lands or other rights.

(b) LANDS REMAIN PART OF JOINT RESERVATION SUBJECT TO EXCLUSIVE TRIBAL CONTROL.—Any lands acquired under subsection (a) within the exterior boundaries of the Wind River Reservation shall remain a part of the Reservation and subject to the joint tribal laws of the Reservation, except that the lands so acquired shall be subject to the exclusive use and control of the tribe for which such lands were acquired.

(c) INCOME.—The income from lands acquired under subsection (a) shall be credited to the tribe for which such lands were acquired.

(d) SAVINGS PROVISION.—Nothing in this section shall be construed to prevent the joint acquisition of lands for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation and the Northern Arapaho Tribe of the Wind River Reservation.

SEC. 16. ADVANCED TRAINING AND RESEARCH.

(a) Section 111 of the Indian Health Care Improvement Act (25 U.S.C. 1616d) is amended—

(1) in subsection (a)—

(A) by striking "who have worked in an Indian health program (as defined in section 108(a)(2)) for a substantial period of time"; and

(B) by adding at the end the following new sentence: "In selecting participants for a program established under this subsection, the Secretary, acting through the Service, shall give priority to applicants who are employed by the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations, at the time of the submission of the applications."; and

(2) in subsection (b), by inserting after "Indian health program" the following: "(as defined in section 108(a)(2))".

(b) NURSING RESIDENCY PROGRAM.—Section 118(b) of such Act (25 U.S.C. 1616k(b)) is amended by inserting before the period the following: "or a Master's degree".

SEC. 17. REDESIGNATION OF YAKIMA INDIAN NATION TO YAKAMA INDIAN NATION. 25 USC 601 note.

(a) REDESIGNATION.—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the "Confederated Tribes and Bands of the Yakama Indian Nation".

(b) REFERENCES.—Any reference in a law (including any regulation), map, document, paper, or other record of the United States to Confederated Tribes and Bands of the Yakima Indian Nation

referred to in subsection (a) shall be deemed to be a reference to the "Confederated Tribes and Bands of the Yakama Indian Nation".

SEC. 18. EXPENDITURE OF JUDGMENT FUNDS.

Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with the letter of Charles Dawes, the Chief of the Ottowa Tribe of Oklahoma, to the Bureau of Indian Affairs, Muskogee Area Office, dated September 21, 1993, and the accompanying Resolution that was approved by the Business Committee of the Ottawa Tribe of Oklahoma August 19, 1993, the specific changes in the Secretarial Plan that became effective on June 14, 1983, for the use of funds that were awarded in satisfaction of judgments in final awards by the Indian Claims Commission for claims with the following docket numbers: 133–A, 133–B, 133–C, 302, and 338.

25 USC 166.

SEC. 19. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

The activities of the Department of the Interior associated with the Department's consultation with Indian tribes and organizations related to the management of funds held in trust by the United States for Indian tribes shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 20. POKAGON POTAWATOMI MEMBERSHIP LIST.

The Act entitled "An Act to restore Federal services to the Pokagon Band of Potawatomi Indians", approved September 21, 1994 (Public Law 103–323) is amended—

25 USC 1300j–8.

(1) by redesignating section 9 as section 10; and

(2) by inserting after section 8 the following new section:

25 USC 1300j–7a.

"SEC. 9. MEMBERSHIP LIST.

"(a) LIST OF MEMBERS AS OF SEPTEMBER 1994.—Not later than 120 days after the date of enactment of this Act, the Bands shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the respective Bands.

"(b) LIST OF INDIVIDUALS ELIGIBLE FOR MEMBERSHIP.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Bands shall submit to the Secretary membership rolls that contain the names of all individuals eligible for membership in such Bands. Each such Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band that determine the qualifications for inclusion in the membership roll of the Band.

Federal Register, publication.

"(2) PUBLICATION OF NOTICE.—At such time as the rolls have been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such rolls.

"(3) MAINTENANCE OF ROLLS.—The Bands shall ensure that the rolls are maintained and kept current.".

SEC. 21. ODAWA AND OTTAWA MEMBERSHIP LISTS.

The Little Traverse Bay Bands of Odawa and the Little River Band of Ottawa Indians Act (Public Law 103–324) is amended by adding at the end the following new section:

"SEC. 9. MEMBERSHIP LIST. 25 USC 1300k-7.

"(a) LIST OF PRESENT MEMBERSHIP.—Not later than 120 days after the date of enactment of this Act, the Band shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the Band.

"(b) LIST OF INDIVIDUALS ELIGIBLE FOR MEMBERSHIP.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Band shall submit to the Secretary membership rolls that contain the names of all individuals eligible for membership in such Band. The Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band that determine the qualifications for inclusion in the membership roll of the Band.

"(2) PUBLICATION OF NOTICE.—At such time as the rolls have been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such rolls. Federal Register, publication.

"(3) MAINTENANCE OF ROLLS.—The Band shall ensure that the rolls are maintained and kept current.".

SEC. 22. INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

(a) IN GENERAL.—The Indian Self-Determination Act is amended—

(1) in section 107(b)(2) (25 U.S.C. 450k(b)(2)), by striking "Committee on Interior and Insular Affairs" and inserting "Committee on Natural Resources";

(2) in section 301 (25 U.S.C. 450f note), by striking "eight" and inserting "18"; and

(3) in section 302(a) (25 U.S.C. 450f note), by striking "The Secretaries" and inserting "For each fiscal year, the Secretaries".

(b) ADVISORY COMMITTEES.—The Indian Self-Determination and Education Assistance Act Amendments of 1990 (title II of Public Law 101-644) is amended by adding at the end the following new section:

"SEC. 204. TRIBAL AND FEDERAL ADVISORY COMMITTEES. 25 USC 450a-1.

"Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638).".

SEC. 23. CROW BOUNDARY SETTLEMENT.

Section 6(c) of the Crow Boundary Settlement Act of 1994 is amended to read as follows: *Post*, p. 4638.

79-194 O—95—37 : QL 3 Part 5

"(c) INVESTMENT.—At the request of the Secretary, the Secretary of the Treasury shall invest all sums deposited into, accruing to, and remaining in, the Crow Tribal Trust Fund in accordance with the first section of the Act of February 12, 1929 (45 Stat. 1164, chapter 178, 25 U.S.C. 161a).".

Approved November 2, 1994.

LEGISLATIVE HISTORY—H.R. 4709:

HOUSE REPORTS: No. 103-704 (Comm. on Natural Resources).
CONGRESSIONAL RECORD, Vol. 140 (1994):
Aug. 16, considered and passed House.
Oct. 4, considered and passed Senate, amended.
Oct. 6, House concurred in Senate amendment.

SUBCHAPTER III—SPECIAL PROGRAMS RELATING TO ADULT EDUCATION FOR INDIANS

§ 2631. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5330, Apr. 28, 1988, 102 Stat. 410, related to improvement of educational opportunities for adult Indians. See section 7851 of Title 20, Education.

SUBCHAPTER IV—PROGRAM ADMINISTRATION

§§ 2641 to 2643. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2641, Pub. L. 100–297, title V, § 5341, Apr. 28, 1988, 102 Stat. 411; Pub. L. 100–427, § 21, Sept. 9, 1988, 102 Stat. 1612, related to establishment of Office of Indian Education within Department of Education. See section 3423c of Title 20, Education.

Section 2642, Pub. L. 100–297, title V, § 5342, Apr. 28, 1988, 102 Stat. 412; Pub. L. 100–427, § 22, Sept. 9, 1988, 102 Stat. 1613, established National Advisory Council on Indian Education.

Section 2643, Pub. L. 100–297, title V, § 5343, Apr. 28, 1988, 102 Stat. 413, authorized appropriations for administration of Indian education programs. See section 7882 of Title 20, Education.

SUBCHAPTER V—MISCELLANEOUS

§ 2651. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5351, Apr. 28, 1988, 102 Stat. 413; Pub. L. 100–427, § 23, Sept. 9, 1988, 102 Stat. 1613, defined terms for purposes of this chapter. See section 7881 of Title 20, Education.

CHAPTER 29—INDIAN GAMING REGULATION

Sec.

§ 2701. Findings

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

(Pub. L. 100–497, § 2, Oct. 17, 1988, 102 Stat. 2467.)

SHORT TITLE

Pub. L. 100–497, § 1, Oct. 17, 1988, 102 Stat. 2467, provided: ''That this Act [enacting this chapter and sections 1166 to 1168 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Indian Gaming Regulatory Act'.''

§ 2702. Declaration of policy

The purpose of this chapter is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

(Pub. L. 100–497, § 3, Oct. 17, 1988, 102 Stat. 2467.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2703. Definitions

For purposes of this chapter—

(1) The term ''Attorney General'' means the Attorney General of the United States.

(2) The term ''Chairman'' means the Chairman of the National Indian Gaming Commission.

(3) The term ''Commission'' means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term ''Indian lands'' means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians which—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term ''class I gaming'' means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term ''class II gaming'' means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term ''class II gaming'' does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term ''class III gaming'' means all forms of gaming that are not class I gaming or class II gaming.

(9) The term ''net revenues'' means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 100–497, §4, Oct. 17, 1988, 102 Stat. 2467; Pub. L. 102–238, §2(a), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 102–497, §16, Oct. 24, 1992, 106 Stat. 3261.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1992—Par. (7)(E). Pub. L. 102–497 struck out ''or Montana'' after ''Wisconsin''.

1991—Par. (7)(E), (F). Pub. L. 102–238 added subpars. (E) and (F).

CLASS II GAMING WITH RESPECT TO INDIAN TRIBES IN WISCONSIN OR MONTANA ENGAGED IN NEGOTIATING TRIBAL-STATE COMPACTS

Pub. L. 101–301, §6, May 24, 1990, 104 Stat. 209, provided that: ''Notwithstanding any other provision of law, the

term 'class II gaming' includes, for purposes of applying Public Law 100–497 [25 U.S.C. 2701 et seq.] with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act [May 24, 1990], any gaming described in section 4(7)(B)(ii) of Public Law 100–497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100–497 [25 U.S.C. 2710(d)(3)].''

TRIBAL-STATE COMPACT COVERING INDIAN TRIBES IN MINNESOTA; OPERATION OF CLASS II GAMES; ALLOWANCE OF ADDITIONAL YEAR FOR NEGOTIATIONS

Pub. L. 101–121, title I, § 118, Oct. 23, 1989, 103 Stat. 722, provided that: ''Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100–497 [25 U.S.C. 2701 et seq.], for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act [Oct. 23, 1989] and continuing for 365 days from that date, any gaming described in section 4(7)(B)(ii) of Public Law 100–497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdication [sic] over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100–497 [Oct. 17, 1988], to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100–497 [25 U.S.C. 2710(d)(3)].''

§ 2704. National Indian Gaming Commission

(a) Establishment

There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(Pub. L. 100–497, § 5, Oct. 17, 1988, 102 Stat. 2469.)

§ 2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

(Pub. L. 100–497, § 6, Oct. 17, 1988, 102 Stat. 2470.)

§ 2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) Omitted

(d) Application of Government Performance and Results Act

(1) In general

In carrying out any action under this chapter, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285).

(2) Plans

In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), the Commission shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.

(Pub. L. 100–497, § 7, Oct. 17, 1988, 102 Stat. 2470; Pub. L. 109–221, title III, § 301(a), May 12, 2006, 120 Stat. 341.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(4), (10) and (d)(1), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Government Performance and Results Act of 1993, referred to in subsec. (d), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

CODIFICATION

Subsec. (c) of this section, which required the Commission to submit a report to Congress every two years on various matters relating to the operation of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 114 of House Document No. 103-7.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–221 added subsec. (d).

§ 2707. Commission staffing

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so ap-

pointed may receive pay in excess of the annual rate of basic pay payable for GS–17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Pub. L. 100–497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Pub. L. 100–497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Pub. L. 100–497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of

$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section[1]

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

[1] So in original. Probably should be followed by a comma.

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only

when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe[2] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

[2] So in original. Probably should not be capitalized.

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

(Pub. L. 100–497, § 11, Oct. 17, 1988, 102 Stat. 2472.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(7)(B)(iv), (vii)(I), (8)(B)(i), (C), and (e), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 11 of Pub. L. 100–497, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

§ 2711. Management contracts

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied

that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

(Pub. L. 100–497, § 12, Oct. 17, 1988, 102 Stat. 2479.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (e)(1)(C), (3), (g), and (h), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2712. Review of existing ordinances and contracts

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant

to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

(Pub. L. 100–497, § 13, Oct. 17, 1988, 102 Stat. 2481.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2713. Civil penalties

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

(Pub. L. 100–497, § 14, Oct. 17, 1988, 102 Stat. 2482.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b)(1), and (d), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2714. Judicial review

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.

(Pub. L. 100–497, § 15, Oct. 17, 1988, 102 Stat. 2483.)

§ 2715. Subpoena and deposition authority

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Pub. L. 100–497, § 16, Oct. 17, 1988, 102 Stat. 2483.)

§ 2716. Investigative powers

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

(Pub. L. 100–497, § 17, Oct. 17, 1988, 102 Stat. 2484.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2717. Commission funding

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this chapter.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall,

subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

(Pub. L. 100–497, § 18, Oct. 17, 1988, 102 Stat. 2484; Pub. L. 105–83, title I, § 123(a)(1)–(2)(B), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 109–221, title III, § 301(b), May 12, 2006, 120 Stat. 341.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), (2), (4), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(2)(B). Pub. L. 109–221 added subpar. (B) and struck out former subpar. (B) which read as follows: ''The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $8,000,000.''

1997—Subsec. (a)(1). Pub. L. 105–83, § 123(a)(1), substituted ''gaming operation that conducts a class II or class III gaming activity'' for ''class II gaming activity''.

Subsec. (a)(2)(A)(i). Pub. L. 105–83, § 123(a)(2)(A), substituted ''no more than 2.5 percent'' for ''no less than 0.5 percent nor more than 2.5 percent''.

Subsec. (a)(2)(B). Pub. L. 105–83, § 123(a)(2)(B), substituted ''$8,000,000'' for ''$1,500,000''.

APPLICATION TO SELF-REGULATED TRIBES

Pub. L. 105–83, title I, § 123(a)(2)(C), Nov. 14, 1997, 111 Stat. 1566, as amended by Pub. L. 105–277, div. A, § 101(e) [title III, § 338], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295, provided that: ''[N]othing in subsection (a) of this section [amending this section] shall apply to the Mississippi Band of Choctaw.''

§ 2717a. Availability of class II gaming activity fees to carry out duties of Commission

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

(Pub. L. 101–121, title I, Oct. 23, 1989, 103 Stat. 718.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1990, and not as part of the Indian Gaming Regulatory Act which comprises this chapter.

§ 2718. Authorization of appropriations

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

(Pub. L. 100–497, § 19, Oct. 17, 1988, 102 Stat. 2485; Pub. L. 102–238, § 2(b), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 105–83, title I, § 123(b), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 105–119, title VI, § 627, Nov. 26, 1997, 111 Stat. 2522.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–119 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to the provisions of section 2717 of this title, there are hereby authorized to be appropriated for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved, for the operation of the Commission.''

Pub. L. 105–83, § 123(b)(1), substituted ''for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved,'' for ''such sums as may be necessary''.

Subsec. (b). Pub. L. 105–83, § 123(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Notwithstanding the provisions of section 2717 of this title, there are hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.''

1991—Subsec. (b). Pub. L. 102–238 inserted at end ''Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.''

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

(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.

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

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(1), was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

(Pub. L. 100–497, § 21, Oct. 17, 1988, 102 Stat. 2486.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

(Pub. L. 100–497, § 22, Oct. 17, 1988, 102 Stat. 2486.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CHAPTER 30—INDIAN LAW ENFORCEMENT REFORM

§ 2801. Definitions

For purposes of this chapter—

(1) The term ''Branch of Criminal Investigations'' means the entity the Secretary is required to establish within the Office of Justice Services under section 2802(d)(1) of this title.

(2) The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(3) The term ''employee of the Bureau'' includes an officer of the Bureau.

(4) The term ''enforcement of a law'' includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(5) The term ''Indian country'' has the meaning given that term in section 1151 of title 18.

(6) The term ''Indian tribe'' has the meaning given that term in section 1301 of this title.

(7) The term ''offense'' means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(8) The term ''Secretary'' means the Secretary of the Interior.

(10)[1] The term ''tribal justice official'' means—

(A) a tribal prosecutor;

(B) a tribal law enforcement officer; or

(C) any other person responsible for investigating or prosecuting an alleged criminal offense in tribal court.

(Pub. L. 101–379, § 2, Aug. 18, 1990, 104 Stat. 473; Pub. L. 111–211, title II, §§ 203(b), 211(a), July 29, 2010, 124 Stat. 2263, 2264.)

AMENDMENTS

2010—Pub. L. 111–211, § 211(a), redesignated and reordered pars. (9) and (1) to (7) as (1) to (8), respectively, substituted ''Office of Justice Services'' for ''Division of Law Enforcement Services'' in par. (1), and struck out former par. (8) which read as follows: ''The term 'Division of Law Enforcement Services' means the entity established within the Bureau under section 2802(b) of this title.''

Par. (10). Pub. L. 111–211, § 203(b), added par. (10).

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–211, title II, § 201(a), July 29, 2010, 124 Stat. 2261, provided that: ''This title [enacting part G (§ 458ccc et seq.) of subchapter II of chapter 14 of this title and sections 2810 to 2815, 3665a, and 3682 of this title, redesignating part F (§ 458bbb et seq.) of subchapter II of chapter 14 of this title as part H (§ 458ddd et seq.), amending this section and sections 458ddd–1, 458ddd–2, 1302, 1321, 2411 to 2413, 2414a, 2415, 2431 to 2433, 2441, 2442, 2451, 2453, 2802 to 2804, 2809, 3613, 3621, 3653, 3662, 3663, 3666, and 3681 of this title, sections 841, 845, 1162, 4042, and 4352 of Title 18, Crimes and Criminal Procedure, sections 872, 872a, 873, and 878 of Title 21, Food and Drugs, sections 534 and 543 of Title 28, Judiciary and Judicial Procedure, and sections 2996f, 3732, 3796h, 3796dd, 5616, 5783, and 13709 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and section 1302 of this title, section 872 of Title 21, section 534 of Title 28, and sections 3732, 3796h, 3796dd, and 14044 of Title 42, amending provisions set out as a note under section 534 of Title 28, and repealing provisions set out as a note under section 3651 of this title] may be cited as the 'Tribal Law and Order Act of 2010'.''

SHORT TITLE

Pub. L. 101–379, § 1, Aug. 18, 1990, 104 Stat. 473, provided that: ''This Act [enacting this chapter and provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare] may be cited as the 'Indian Law Enforcement Reform Act'.''

SEVERABILITY

Pub. L. 111–211, title II, § 204, July 29, 2010, 124 Stat. 2263, provided that: ''If any provision of this title [see Short Title of 2010 Amendment note above], an amendment made by this title, or the application of such a provision or amendment to any individual, entity, or circumstance, is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this title, the remaining amendments made by this title, and the application of those provisions and amendments to individuals, entities, or circumstances other than the affected individual, entity, or circumstance shall not be affected.''

FINDINGS; PURPOSES

Pub. L. 111–211, title II, § 202, July 29, 2010, 124 Stat. 2262, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country;

''(2) Congress and the President have acknowledged that—

''(A) tribal law enforcement officers are often the first responders to crimes on Indian reservations; and

''(B) tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country;

''(3) less than 3,000 tribal and Federal law enforcement officers patrol more than 56,000,000 acres of Indian country, which reflects less than ½ of the law enforcement presence in comparable rural communities nationwide;

''(4) the complicated jurisdictional scheme that exists in Indian country—

''(A) has a significant negative impact on the ability to provide public safety to Indian communities;

''(B) has been increasingly exploited by criminals; and

[1] So in original. There is no par. (9).

Public Law 100-153
100th Congress

An Act

Nov. 5, 1987
[H.R. 2937]

To make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Indian Law Technical Amendments of 1987.

SECTION 1. This Act may be cited as the "Indian Law Technical Amendments of 1987".

25 USC 331 note.
25 USC 373.

SEC. 2. Section 2 of the Act of June 25, 1910 (36 Stat. 856), as amended, is further amended by deleting the phrase "the age of twenty-one years, or over" and inserting, in lieu thereof, the phrase "the age of eighteen years or older".

SEC. 3. (a) The Act of September 14, 1961 (75 Stat. 500) is amended by—

(1) deleting the phrase "Section 5, lots 7 and 8;" in section 1, and

(2) inserting the phrase "Section 5, lots 7 and 8;" after the phrase "Township 15 north, range 3 east:" in section 2.

(b) Subsection (e) of section 2 of the Act of October 28, 1986 (100 Stat. 3243) is hereby repealed.

25 USC 1401.

SEC. 4. Section 1 of the Act of October 19, 1973 (87 Stat. 466) is amended by—

(1) inserting "(a)" before the word "That";

(2) deleting the phrase "any interest earned thereon" and inserting, in lieu thereof, the phrase "any investment income earned thereon"; and

(3) adding the following new subsections—

"(b) Except as provided in the Act of September 22, 1961 (75 Stat. 584), amounts which the Secretary of the Interior has remaining after execution of either a plan under this Act, or another Act enacted heretofore or hereafter providing for the use or distribution of amounts awarded in satisfaction of a judgment in favor of an Indian tribe or tribes, together with any investment income earned thereon and after payment of attorney fees and litigation expenses, shall be held in trust by the Secretary for the tribe or tribes involved if the plan or Act does not otherwise provide for the use of such amounts.

Indian Tribal Judgment Funds Use or Distribution Act.
25 USC 2301.

"(c) This Act may be cited as the 'Indian Tribal Judgment Funds Use or Distribution Act'.".

SEC. 5. Paragraph (2) of section 2 of the Old Age Assistance Claims Settlement Act (98 Stat. 2317) is amended by inserting a colon after the phrase "trust property" and the following proviso—

Federal Register, publication.

"*Provided,* That, except for purposes of section 4, the term also includes the reimbursements for welfare payments identified in either the list published on April 17, 1985, at page 15290 of volume 50 of the Federal Register, as modified or amended on November 13, 1985, at page 46835 of volume 50 of the Federal Register, or the list published on March 31, 1983, at page 13698 of volume 48 of the Federal Register, as modified or amended on

November 7, 1983, at page 51204 of volume 48 of the Federal Register".

Minnesota.
25 USC 331 note.

SEC. 6. (a) Paragraph (1) of section 3 of the White Earth Reservation Land Settlement Act of 1985 (100 Stat. 61, 62) is amended to read as follows—

"(1) 'Heir' means a person who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law, or one who is determined under section 9, by the application of the inheritance laws of Minnesota in effect on March 26, 1986, to be entitled to receive compensation payable under section 8.".

(b) Subsection (b) of section 5 of the White Earth Reservation Land Settlement Act is amended to read as follows—

25 USC 331 note.

"(b) The 'proper county recording officer', as that term is used in subsection (a) of this section, shall be a county recorder, registrar of titles, or probate court in Becker, Clearwater, or Mahnomen Counties, Minnesota.".

Appropriation authorization.

(c) Notwithstanding any other provision of law, the Secretary of the Treasury is authorized and directed to transfer to the White Earth Economic Development and Tribal Government Fund, out of funds in the Treasury of the United States not otherwise appropriated, an amount equal to the sum of—

(1) $55,917 for the interest that would have accrued on the settlement funds appropriated pursuant to section 15 of the White Earth Reservation Land Settlement Act of 1985 if such funds had been properly invested during the period beginning on November 17, 1986, and ending on January 12, 1987, plus

(2) an amount equal to the interest that would have accrued on $55,917 during the period beginning on January 12, 1987, and ending on the date the transfer required under this subsection is made by the Secretary of the Treasury if $55,917 had been invested as part of the White Earth Economic Development and Tribal Government Fund on January 12, 1987.

Amounts transferred to the White Earth Economic Development and Tribal Government Fund under this subsection shall be treated as interest accrued on such Fund.

Alaska.

SEC. 7. The Secretary of the Interior shall calculate and certify to the Secretary of the Treasury for payment out of funds in the judgments, awards, and compromise settlements account of the United States Treasury to Cook Inlet Region, Inc., pursuant to section 2 (a) and (e) of Public Law 94-204 (89 Stat. 1146), as amended by section 1411 of Public Law 96-487 (94 Stat. 2497) and section 22 of Public Law 99-396 (100 Stat. 846), a final determination of interest on funds withheld from revenues owed to Cook Inlet Region, Inc. under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g), and paid to the Treasury as windfall profits taxes on oil production from the Swanson River and Beaver Creek units in Alaska of which Cook Inlet Region, Inc. may be regarded as a producer under 26 U.S.C. 4996(a)(1), as though such funds had been withheld before conveyance to Cook Inlet Region, Inc. of interests in leases within those units. Such interest shall be calculated and paid for the period from the dates on which such funds otherwise would have been paid to Cook Inlet Region, Inc. to the date of refund of the principal amounts withheld.

SEC. 8. Section 1514 of the Higher Education Amendments of 1986 (20 U.S.C. 4421) is amended—

(1) by striking out "During the 2-year period beginning on the date referred to in subsection (f) of this section" in subsection (d) and inserting in lieu thereof "Unless the Board provides otherwise",

(2) by inserting ", until October 1, 1989," after "Secretary of the Interior shall" in subsection (d), and

(3) by striking out subsections (e) and (f) and inserting in lieu thereof the following:

"(e)(1) The transfers required under subsection (b) shall be completed by no later than June 1, 1988.

"(2) The Institute shall be under the direction and control of the Secretary of the Interior until the earlier of—

"(A) June 1, 1988, or

"(B) a date agreed to by the Board and the Secretary of the Interior.

New Mexico. Contracts. Schools and colleges.

"(f)(1) Before the later of October 15, 1987, or the date that is 10 days after the date of enactment of the Indian Law Technical Amendments of 1987, the Secretary of the Interior shall enter into a contract with the University of New Mexico, the terms of which shall—

"(A) include all administrative systems which are customary to the operation of a national art institute,

"(B) require the provision by the University of New Mexico of technical assistance to the Institute, including the monitoring of the transfers that are required to be made under subsection (b),

"(C) provide for the establishment by the University of New Mexico of an advisory council that makes recommendations to the University of New Mexico with respect to the operation of the contract,

"(D) allow the University of New Mexico to fulfill its obligations under the contract through subcontracts that are entered into in accordance with section 7 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e),

"(E) provide for the expiration of the contract on the date that is 6 months after the date the contract is entered into, but the Board and the University of New Mexico may mutually agree to extend the contract for an additional 2-month period,

"(F) provide that any materials furnished to the Secretary of the Interior by the University of New Mexico, or any subcontractor of the University of New Mexico, under the contract shall become the property of the Institute, and

"(G) include such other terms as the Secretary of the Interior determines to be necessary.

"(2) The advisory council that is required to be established under the contract entered into under paragraph (1) shall be composed of—

"(A) a delegate of the executive director of the National Congress of American Indians,

"(B) a delegate of the president of the American Indian Higher Education Consortium, and

"(C) at least 5 individuals possessing knowledge and experience in Indian arts and culture and in postsecondary education, a majority of whom shall be Indians.".

SEC. 9. Subsection (e) of section 3 of the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (100 Stat. 675) is amended—

(1) by striking "Payments" in paragraph (4)(B) and inserting in lieu thereof "Except as otherwise provided in paragraph (5), payments",

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and

(3) by inserting after paragraph (4) the following new paragraph:

"(5)(A) The Tribal Council may accelerate the payment of the aggregate sum of $3,000 to those members of the tribe certified under paragraph (3) who—

Health and medical care.

"(i) are certified by a physician to be—

"(I) terminally ill, or

"(II) at least 50 percent permanently disabled, or

"(ii) are at least 60 years of age.

"(B) Notwithstanding any other provision of this Act, the Tribal Council may use interest accrued on the Investment Fund for the purpose of making accelerated payments under subparagraph (A).".

Washington. Contracts. Grants.

SEC. 10. The Frank's Landing Indian Community in the State of Washington is hereby recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as eligible to contract, and to receive grants, under the Indian Self-Determination and Education Assistance Act for such services, but the proviso in section 4(c) of such Act (25 U.S.C. 450b(c)) shall not apply with respect to grants awarded to, and contracts entered into with, such Community.

Approved November 5, 1987.

LEGISLATIVE HISTORY—H.R. 2937:

HOUSE REPORTS: No. 100-250 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 100-186 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 133 (1987):
Aug. 3, considered and passed House.
Oct. 1, considered and passed Senate, amended.
Oct. 22, House concurred in Senate amendments.

CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 10, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 10, 2017

s/ Scott Crowell
SCOTT CROWELL
(WSBA No. 18868)
CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com