



105th Congress

---

IN THE SENATE

-----, 1997

---

**A BILL**

To establish administrative procedures and guidelines to clarify the status of certain Indian tribes in California; and for other purposes.

=====

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "California Tribal Status Act of 1997".

**SECTION 2. FINDINGS.**

The Congress finds the following:

(1) The Congress has recognized a special government-to-government relationship with Indian tribes in the United States, whether or not the Indian tribes subsequently entered into special treaty relations with the United States, including those in and of California.

(2) The Constitution contemplates that the extension of recognition by the United States to any Indian tribe is a matter within the sole authority of the Congress, but delegable to the Executive Branch of the Federal Government.

(3) The Secretary of the Interior, pursuant to 25 CFR Part 83 (Procedures For Establishing That

An American Indian Group Exists As An Indian Tribe), has been reviewing, evaluating, and determining whether particular California Indian groups, whose status has been in question for various reasons, should be acknowledged as Indian tribes by the Federal Government. Other California Indian groups have been variously acknowledged, restored, or defined by legislative or judicial action, creating the possibility of inconsistent standards.

(4) Satisfactory administrative resolution of tribal status questions in California has been frustrated by delays of eight years or more in processing individual petitions under 25 CFR Part 83, and by inadequate financial support for the research necessary to document the petitions.

(5) As a result of these delays and inadequate funding, there is an urgent need to clarify the eligibility of California Indian tribal groups to be acknowledged as Indian tribes.

(6) Congress recognized that California Indians faced historical circumstances much different than those encountered by other tribes throughout the Nation when it created the Advisory Council on California Indian Policy pursuant to Public Law 102-416, 106 Stat. 2131 (October 14, 1992), and charged it with the mandate to "identify the special problems confronting unacknowledged and terminated Indian tribes" in California, and to "propose reasonable mechanisms to provide for the orderly and fair consideration of requests by such tribes for Federal acknowledgment" (Section 5 of P.L. 102-416).

(7) Congress further recognized the unique historical circumstances of the California Indians when it passed legislation (Act of May 31, 1994, P.L. 103-263, 108 Stat. 709) barring the Secretary from making distinctions between what the Department of the Interior previously had characterized as "historic" and "non-historic" Indian tribes. This action by Congress effectively rejected the Secretary's characterization of many California Indian tribes as mere "adult Indian communities" of a "non-historic" nature, possessing limited self-governing authority.

(8) Due to the unique historical circumstances of the Indians of California, and Federal law and policies which have often dealt uniquely with California Indians, current laws and policies on Federal acknowledgment, specifically 25 CFR Part 83, are inadequate to address the uncertain status of these unacknowledged California Indian groups.

(9) During the 1950s, Congress passed legislation authorizing the termination of 41 California Indian tribal groups and rancherias. Distributees of those rancherias included descendants of at least 60 aboriginal California Indian tribes. Thirty-eight of these California Indian tribal groups and rancherias and their members were terminated pursuant to the Act of August 18, 1958 (the "California Rancheria Termination Act"), Public Law 85-671 (72 Stat. 619), as amended by Public Law 88-419 (78 Stat. 390). Despite Congress' express repudiation of the Termination Policy, and despite a succession of cases successfully challenging the Federal Government's implementation of that policy in California (see e.g., Duncan v. Andrus, 517 F.Supp. 1 (1977)), some California Indian tribal groups and rancherias remain, in effect, terminated.

(10) Unresolved tribal status problems in California have fueled additional litigation over the eligibility of certain California Indians for Federal Indian programs and services (see, e.g., Malone v. Bureau of Indian Affairs, 38 F.3d 433 (9th Cir. 1994) and Laughing Coyote v. Bureau of Indian Affairs, No. CV F-93-5055-DLB (E.D. Calif.; July 26, 1994)), and further demonstrate the urgent need for remedial action by Congress to clarify the status of unacknowledged California Indian groups.

### **SECTION 3. PURPOSE.**

The purposes of this Act are --

(1) to address the special status problems of present-day California Indians resulting from the unique historical circumstances of the United States' dealings with aboriginal California Indian tribes and

lands;

(2) to extend to California Indian groups that are determined to be Indian tribes the protection, services, and benefits available to those Indian tribes presently acknowledged by the Federal Government;

(3) to provide clear and consistent standards of administrative review of documented petitions for Federal acknowledgment submitted by California Indian groups, taking into account the unique history of the California Indians;

(4) to expedite the administrative review process by providing definitive timelines for review and adequate resources to process such acknowledgment petitions;

(5) to ensure that the administrative process for review of Federal acknowledgment petitions submitted by California Indian groups reflects a fair and just balance between (a) the need for a detailed and reasonably complete evidentiary record of tribal existence; and (b) the overwhelming historical evidence of the Federal and State governments' neglect of and failure to protect the California Indians, their lands and their culture, during critical periods of California's history and the direct, deleterious effect of those governmental policies on such groups' present ability to compile evidence of continuous tribal existence; and

(6) to remove the authority for Federal acknowledgment of California Indian groups from the Bureau of Indian Affairs and place it under an independent Commission on California Indian Recognition.

#### **SECTION 4. DEFINITIONS.**

For purposes of this Act:

(1) The term "aboriginal group" means any Indian entity whose members inhabited or whose range extended into any part of the area now constituting the State of California prior to the first sustained contact of such members with citizens or officials of the United States or territorial governments or, if relevant, with citizens or officials of foreign governments from which the United States acquired territory.

(2) The term "acknowledged" means, with respect to an Indian group, that the Commission on California Indian Recognition has made an acknowledgment, as defined in paragraph (3), for such group.

(3) The term "acknowledgment" means a determination by the Commission on California Indian Recognition that an Indian group --

(A) constitutes an Indian tribe with a government-to-government relationship with the United States; and

(B) with respect to which the members are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "Assistant Secretary" means the Assistant Secretary - Indian Affairs, or that officer's authorized representative.

(5) The term "autonomous" means the exercise of political influence or authority independent of the control of any other Indian governing entity. For purposes of this Act, such term must be understood not only in the context of the culture and social organizations of the particular California Indian group, but also in the context of the attempts by the United States and the State of California during the second half of the nineteenth century to undermine or destroy the institutions of tribal culture and self-government in California.

(6) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(7) The term "California Indian" means a direct descendant of --

(A) an American Indian native to or residing in California prior to June 1, 1852;

(B) a person named on any roll prepared for the distribution of claims awards or settlements for California Indians; or

(C) a person classified as a member of a California Indian group by any agency of the

United States Government for any purpose.

(8) The term "California Indian group" means --

(A) any band, tribe, village, or community of North American Indians aboriginal to the area now constituting the State of California and possessing a common political, territorial, cultural, and historical heritage; or

(B) any band, tribe, village, or community of North American Indians aboriginal to the area now constituting the State of California which exists as a result of --

(i) government reservation, allotment, or Indian reorganization policies,

(ii) appropriations for the purchase of lands for "homeless California Indians", or

(iii) the Act of August 18, 1958 (Public Law 85-671, 72 Stat. 619, commonly referred to as the "California Rancheria Termination Act"), as amended by the Act of August 11, 1964 (Public Law 88-419, 78 Stat. 390); and

(C) that the Secretary does not presently acknowledge to be an Indian tribe.

(9) The term "Commission" means the Commission on California Indian Recognition established under Section 5.

(10) The term "community" means a network or networks showing social interaction among Indian group members and differentiating members from nonmembers, with due regard to the size and organizational character of the group, the geographic proximity of members to one another and to any group settlement or settlements, and the group's relative social isolation from non-Indians regardless of geographic proximity to non-Indians.

(11) The term "continuous" or "continuously" means, with respect to a period of history of an Indian group, extending from the first sustained contact with Euro-Americans throughout the history of the

group to the present, substantially without interruption.

(12) The term "Department" means the Department of the Interior.

(13) The terms "historic," "historical" and "history" refer to the period from either December 31, 1852, or from the earliest period of sustained contact between the aboriginal group from which the petitioners descended and permanent non-Indian settlements, whichever is later.

(14) The term "Indian" means any individual who is a descendant of a group aboriginal to North America.

(15) The term "Indian group" means any aggregation of California Indians that is not acknowledged by the Secretary to be an Indian tribe.

(16) The term "Indian tribe" means any Indian tribe, band, pueblo, village, or community within the United States that --

(A) the Secretary has acknowledged as an Indian tribe as of the date of enactment of this Act, or acknowledges to be an Indian tribe pursuant to the procedures applicable to certain petitions under active consideration at the time of the transfer of petitions to the Commission under section 6(a)(3); or

(B) the Commission acknowledges as an Indian tribe under this Act.

(17) The term "member of a California Indian group" means an individual who -

(A) is recognized by a California Indian group as meeting its membership criteria; and

(B) consents to being listed as a member of that group.

(18) The term "member of an Indian tribe" means an individual who --

(A) meets the membership requirements of the Indian tribe, as set forth in its governing document or, in the absence of a governing document which sets out such requirements, is recognized

as a member collectively by those persons comprising the tribal governing body; and

(B) is listed on the tribal rolls of that Indian tribe as a member, if such rolls are maintained.

(19) The term "other party" means any affected person, entity or organization, other than petitioner, who submits comments or evidence in support of, or in opposition to, a petition; and may include the State of California, political subdivisions of the State, or a California Indian tribe or group.

(20) The term "petition" means a petition for acknowledgment submitted or transferred to the Commission under section 6 of this Act, or reviewed by the Assistant Secretary under section 11.

(21) The term "petitioner" means any California Indian group that has submitted, or submits, a petition to the Assistant Secretary or Commission requesting acknowledgment that the group is an Indian tribe.

(22) The term "political influence or authority" means --

(A) having a tribal council, leadership, internal process, or other mechanism which is used as a means of --

(i) influencing or controlling the behavior of a group's members in a significant manner;

(ii) making decisions for a group which substantially affect its members; or

(iii) representing a group in dealing with nonmembers in matters of consequence to the group.

(B) Context of Term. -- Such term shall be understood in the context of the history, culture, and social organization of the group.

(23) The term "recognized" or "federally recognized" means listed on the list prepared and published by the Secretary pursuant to 25 CFR Part 83 and Public Law 103-454 (November 2, 1994), which

list contains the names of those Indian tribes in the United States that are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(24) The term "Secretary" means the Secretary of the Interior, or that officer's authorized representative.

(25) The term "treaty" means any treaty --

(A) made by any government with, or on behalf of, any California Indian group, whereby the United States acquired territory by purchase, conquest, annexation or cession; or

(B) negotiated by the United States with, or on behalf of, any California Indian group, whether or not the treaty was subsequently ratified.

## **SECTION 5. COMMISSION ON CALIFORNIA INDIAN RECOGNITION.**

(a) **ESTABLISHMENT.** -- There is established, as an independent commission, the Commission on California Indian Recognition. The Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) **MEMBERSHIP.** --

(1) **In General.** --

(A) **Members.** -- The Commission shall consist of three members appointed by the President, by and with the advice and consent of the Senate.

(B) **California Indians to Serve.** -- At least two of the Commission's members shall be California Indians.

(C) **Individuals To Be Considered for Membership.** -- In making appointments to the Commission, the President shall give careful consideration to --

(i) recommendations received from the Advisory Council on California Indian

Policy and from California Indian tribes or groups; and

(ii) individuals who have a background in Indian law or policy, anthropology, genealogy, or history, particularly those whose background or studies reflect a special emphasis on California Indians.

(2) Political Affiliation. -- No more than two members of the Commission may be members of the same political party.

(3) Terms. --

(A) Except as provided in subparagraph (B), each member of the Commission shall be appointed for a term of four years.

(B) Initial Appointments. -- As designated by the President at the time of appointment, of the members initially appointed under this subsection -

(i) one member shall be appointed for a term of two years;

(ii) one member shall be appointed for a term of three years; and

(iii) one member shall be appointed for a term of four years.

(4) Vacancies. -- Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office.

(5) In General. --

(A) Compensation. -- Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the

Executive Schedule under section 5316 of title 5, United States Code, for each day, including travel time, such member is engaged in the actual performance of duties authorized by the Commission.

(B) Travel. -- All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) Full-time Employment. -- Each member of the Commission shall serve on the Commission as a full-time employee of the Federal Government. No member of the Commission may, while serving on the Commission, be otherwise employed as an officer or employee of the Federal Government. Service by a member who is an employee of the Federal Government at the time of nomination as a member shall be without interruption or loss of civil service status or privilege.

(7) Chairperson. -- At the time appointments are made under paragraph (1), the President shall designate one of the appointees Chairperson of the Commission.

(c) MEETINGS AND PROCEDURES. --

(1) In General. -- The Commission shall hold its first meeting no later than 30 days after the date on which all members of the Commission have been appointed and confirmed by the Senate.

(2) Quorum. -- Two members of the Commission shall constitute a quorum for the transaction of business.

(3) Rules. -- The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(4) Principal Office. -- The principal office of the Commission shall be in Sacramento, California.

(d) DUTIES. -- The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES. --

(1) Powers and Authorities of Chairperson. -- Subject to such rules and regulations as may be adopted by the Commission, the Chairperson may --

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairperson deems advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(2) General Powers and Authorities of Commission. --

(A) In General. -- The Commission may --

(i) hold such hearings and subpoena such witnesses;

(ii) take such testimony;

(iii) enter into such contracts and other arrangements, subject to the availability of

funds;

- (iv) have such printing and binding done;
- (v) make such expenditures; and
- (vi) take such other actions,

as the Commission may deem advisable.

(B) Oaths and Affirmations. -- Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(3) Information. --

(A) In General. -- The Commission may secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require for the purpose of this Act, and each such officer, department, agency, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request of the Chairperson.

(B) Facilities, Services, and Details. -- Upon the request of the Chairperson, to assist the Chairperson in carrying out the duties of the Commission under this section, the head of any Federal department, agency, or instrumentality may --

(i) make any of the facilities and services of such department, agency, or instrumentality available to the Commission; and

(ii) detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis.

(C) Mails. -- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) **FEDERAL ADVISORY COMMITTEE ACT.** -- The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

(g) **TERMINATION OF COMMISSION.** -- The Commission shall terminate on the date that is 12 years after the date of enactment of this Act.

## **SECTION 6. PETITIONS FOR ACKNOWLEDGMENT.**

(a) **IN GENERAL.** --

(1) **Petitions.** -- Any California Indian group may submit to the Commission a petition requesting that the Commission acknowledge that the group is an Indian tribe. The petition shall state whether the petitioner is requesting review under the criteria set out in subsection (b) or the criteria set out in subsection (d).

(2) **Petitioners.** -- The rights of petition under this title shall apply to all California Indian groups notwithstanding any other law or administrative or judicial determination regarding the status of a particular group made prior to enactment of this Act, except those groups whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(3) **Transfer of Pending Petitions.** -- No later than 30 days after the date on which all of the members of the Commission have been appointed and confirmed by the Senate, the Secretary shall transfer to the Commission all petitions pending before the Department that request the Secretary, or the Federal Government, to acknowledge a California Indian group as an Indian tribe. On the date of such transfer, the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any California Indian group as an Indian tribe, except as provided in section 10. Petitions transferred to the Commission under this paragraph shall, for the purposes of this Act, be considered submitted to the Commission as of the date of such transfer.

(b) PETITION FORM AND CONTENT. -- Any petition submitted under subsection (a) by a California Indian group shall be in a form that clearly indicates that it is a petition requesting the Commission to acknowledge that the group is an Indian tribe and, except as provided in subsection (d), shall contain each of the following:

(1) Statement of Facts. -- A statement of facts establishing that the petitioner has been identified from historical times until the present, on a substantially continuous basis, as a California Indian group, except that a petitioner shall not be considered as having failed to satisfy any requirement of this subsection merely because of fluctuations of tribal activity during various years. Any interruption in continuity that is 40 years or less shall be deemed to comply with this requirement. An interruption that is more than 40 years shall be deemed to comply with this requirement only if the Commission determines that the petition complies with the remaining criteria of this subsection. Evidence which can be offered to demonstrate the Indian identity of the petitioner on a substantially continuous basis shall include one or more of the following:

(A) Identification of Petitioner. -- Identification of the petitioner as an Indian entity by Federal authorities.

(B) Relationship of Petitioner with State Government. -- Relationships of the petitioner with the State government based on identification of the petitioner as an Indian entity.

(C) Relationship of Petitioner with a Political Subdivision of a State. -- Dealings of the petitioner with a county, parish, or other local government in a relationship based on the Indian identity of the petitioner.

(D) Identification of Petitioner on the Basis of Certain Records. -- Identification of the petitioner as an Indian entity by records in private or public archives, courthouses, churches, or schools.

(E) Identification of Petitioner by Certain Experts. -- Identification of the petitioner as an Indian entity by an anthropologist, historian, or other scholar.

(F) Identification of Petitioner by Certain Media. -- Identification of the petitioner as an Indian entity in a newspaper, book, or similar medium.

(G) Identification of Petitioner by Another Indian Tribe or Organization. -- Identification of the petitioner as an Indian entity by another Indian tribe or by a national, regional or state Indian organization.

(H) Identification of Petitioner by a Foreign Government or International Organization. -- Identification of the petitioner as an Indian entity by a foreign government or an international organization.

(I) Other Evidence of Identification. -- Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the petitioner.

(2) Evidence of Community. -- A statement of facts establishing that --

(A) a substantial portion of the membership of the petitioner forms a present community;  
and

(B) members of the petitioner are descendants of a California Indian group that historically inhabited a specific geographic area.

(3) Autonomous Entity. -- A statement of facts which establishes that the petitioner has maintained political influence or other authority over its members as an autonomous entity on a substantially continuous basis from historical times until the present. Any interruption in political influence that is 40 years or less shall be deemed to comply with this requirement. An interruption that is more than 40 years shall be deemed to comply with this requirement only if the Commission determines that the petition complies with

the remaining criteria of this subsection.

(4) Governing Document. -- A copy of the present governing document of the petitioner, or in the absence of a written document, a statement describing in full the membership criteria of the petitioner and the procedures through which the petitioner currently governs its affairs and members.

(5) List of Members. --

(A) In General. -- A list of all current members of the petitioner and their current addresses and a copy of each available former list of members based on the petitioner's own defined criteria.

(B) Requirements for Membership. -- The membership must consist of individuals who have established descendency from a California Indian group that existed historically or from historical California Indian groups that combined and functioned as a single autonomous entity.

(C) Evidence of Tribal Membership. -- Evidence of tribal membership required by the Commission includes (but is not limited to) --

(i) Descendancy Rolls. -- Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(ii) Certain Official Records. -- State, Federal, or other official records or evidence identifying then present members of the petitioner, or ancestors of then present members of the petitioner, as being descendants of an historic California Indian group or historic California Indian groups that combined and functioned as a single autonomous entity;

(iii) Enrollment Records. -- Church, school, and other similar enrollment records, including records barring such enrollment, identifying then present members, or ancestors of then present members, as being descendants of an historic California Indian group or historic California Indian groups that combined and functioned as a single autonomous entity;

(iv) Affidavits of Recognition. -- Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying then present members, or ancestors of then present members, as being descendants of an historic California Indian group or historic California Indian groups that combined and functioned as a single autonomous entity; and

(v) Other Records or Evidence. -- Other records or evidence identifying then present members, or ancestors of then present members, as being descendants of an historic California Indian group or historic California Indian groups that combined and functioned as a single autonomous entity.

(c) PRESUMPTIONS. -- (1) For purposes of the requirements of subsections (b)(1) through (b)(3), it is presumed that changes in the community interaction, organization or political influence of a California Indian group which occurred during the period from 1852 to 1934 were caused by such group's efforts to adapt to Federal laws and policies that prohibited or discouraged essential aspects of tribal authority and culture, or to avoid the repressive effects of the Indian laws and policies of the State of California, and did not constitute either abandonment or cessation of tribal relations.

(2) The presumption described in subsection (c)(1) may be rebutted only by clear and convincing evidence.

(d) PREVIOUS FEDERAL ACKNOWLEDGMENT; PRESUMPTION. -- (1) A petition for acknowledgment under this subsection must contain information sufficient to establish that the petitioner satisfies each of the following criteria:

(A) Not less than 75 percent of the current members of the petitioner are descendants of members of the California Indian group with respect to which the petitioner bases its claim of acknowledgment. Proof of ancestry may derive from --

- (i) Federal, state, and other government records;
- (ii) church and school records; and
- (iii) affidavits prepared by tribal elders or the governing body of the California Indian group.

(B) The membership of the petitioner is composed primarily of persons who are not enrolled members of any other Indian tribe.

(C) The petitioner --

- (i) is the successor in interest to a party to a treaty or treaties; or
- (ii) is an Indian group for the benefit of which the United States took into trust lands, or which the Federal Government has treated as having collective rights in tribal lands or funds; or
- (iii) has been acknowledged by any agency of the Federal Government as eligible to participate in the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.).

(2) (A) A petition which satisfies the criteria in paragraph (1) creates a presumption that --

- (i) the petitioner was previously acknowledged as an Indian tribe by the United States; and
- (ii) the petition meets the criteria of subsections (b)(1) through (b)(3).

Once such a presumption is created, the burden of proof shall be upon the Secretary to rebut the presumption.

(B) The presumption described in subparagraph (A) may be rebutted only by evidence that

--

- (i) contradicts all, or substantially all, of the evidence submitted by the petitioner,

or

(ii) demonstrates that the petitioner permanently abandoned tribal relations or that it fails to constitute a contemporary community.

The Commission shall afford the petitioner an opportunity to respond to such documentary evidence.

(e) **BURDEN OF PROOF; INTERPRETATION.** -- In resolving any question of fact in the application of the criteria under subsection (d), a matter shall be deemed to have been proven as fact if the petitioner, or the Secretary under subsection (d)(2), shows the matter to be more likely true than not. All evidence shall be interpreted in the context of the cultures and social organizations of the California Indian tribes or groups in the geographical and cultural area of the petitioner.

(f) **WAIVER OF CERTAIN PROVISIONS.** -- The Secretary may, for good cause, waive the percentage requirement of subsection (d)(1)(A) if the petitioner demonstrates that a substantial portion of its members are described in such subsection.

## **SECTION 7. NOTICE OF RECEIPT OF PETITION.**

(a) **PETITIONER.** --

(1) **In General.** -- Not later than 30 days after a petition is submitted or transferred to the Commission under section 6(a), the Commission shall --

(A) send an acknowledgment of receipt in writing to the petitioner; and

(B) publish in the Federal Register a notice of such receipt, including the name, location, and mailing address of the petitioner and such other information that --

(i) identifies the entity that submitted the petition and the date the petition was received by the Commission; and

(ii) indicates where a copy of the petition may be examined.

(b) **OTHERS.** -- In addition to providing the notification required under subsection (a), the

Commission shall notify, in writing, the Governor and Attorney General of, and each federally recognized Indian tribe within, the State of California.

(c) PUBLICATION; OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS. --

(1) Publication. -- The Commission shall publish the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest the location of the petitioner.

(2) Opportunity for Supporting or Opposing Submissions. --

(A) In General. -- Each notice shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of, or in opposition to, the petition.

(B) Copy to Petitioner. -- A copy of any submission under subparagraph (A) shall be provided to the petitioner upon receipt by the Commission.

(C) Response. -- The petitioner shall be provided an opportunity to respond to any submission made under subparagraph (A) prior to a determination on the petition by the Commission.

**SECTION 8. PROCESSING PETITIONS UNDER SECTION 6(b).**

(a) REVIEW. -- (1) Upon receipt of a petition in which the petitioner has elected for review under the criteria set forth in section 6(b), the Commission shall conduct a review under those criteria to determine whether the petitioner is entitled to be acknowledged as an Indian tribe.

(2) The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) The Commission may also initiate other research for any purpose relating to its analysis of the petition, including obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) NOTICE OF DEFICIENCIES. --

(1) In General. -- Prior to the actual consideration of the petition and by no later than the date that is 180 days after the date on which the petition is submitted or transferred to the Commission, the Commission shall notify the petitioner --

(A) of any obvious deficiencies, or significant omissions, that are apparent upon an initial review of the petition and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification; or

(B) that there are no obvious deficiencies or significant omissions in the petition.

(2) Withdrawal or Submission of Additional Information. -- By no later than the date that is 365 days after receipt of a notice of obvious deficiencies or significant omissions, the petitioner may either withdraw its petition or submit additional information or clarification. If the petitioner fails to withdraw its petition or submit additional information within the 365-day period, its petition shall be deemed to have been withdrawn.

(3) Withdrawal; One Time Only. -- A petition may be withdrawn only once without prejudice to being refiled. Any subsequent withdrawal shall be with prejudice.

(c) CONSIDERATION. --

(1) In General. -- Except as otherwise provided in this subsection, petitions shall be considered on a first come, first served basis, determined by the date of the original filing of the petition with the Commission, or the Department if the petition is one transferred to the Commission pursuant to section 6(a)(3). The Commission shall establish a priority register including those petitions pending before the Department on the date of enactment of this Act.

(2) Priority Consideration. -- Petitions submitted under section 6(d) shall receive priority

consideration over petitions submitted under section 6(b).

(d) **ACTIVE CONSIDERATION.** -- Active consideration of the petition by the Commission shall begin by no later than the date that is 45 days after --

(1) the date on which the notice that there are no obvious deficiencies or significant omissions is transmitted under subsection (b), or

(2) if there are obvious deficiencies or significant omissions in the evidence submitted by the petition, receipt of the petitioner's timely response to the notice transmitted under subsection (b).

(e) **NOTICE OF ACTIVE CONSIDERATION.** -- The Commission shall provide written notice to the petitioner, the Secretary, and other parties submitting comments on the petition of the date on which the petition comes under active consideration,

(f) **WITHDRAWAL AND RESUBMITTAL.** -- A petitioner may, subject to the one-time withdrawal rule of subsection (b)(3) and upon written request, withdraw its petition at any time prior to publication in the Federal Register by the Commission of its proposed findings under subsection (g) and may, if it so desires, resubmit a new petition. A petitioner shall not lose its priority date by withdrawing and resubmitting its petition, but the time periods provided in subsection (g) shall begin to run anew upon active consideration of the resubmitted petition.

(g) **PROPOSED FINDINGS AND DETERMINATION.** --

(1) **In General.** -- By no later than the date that is 180 days after the date on which active consideration of the petition begins, the Commission shall --

(A) make proposed findings on the petition; and

(B) publish the proposed findings in the Federal Register.

(2) **Delay; Good Cause.** -- The Commission may delay making proposed findings on a petition

for an additional 90 days upon a showing of good cause by the petitioner.

(3) Report on Findings. -- In addition to the proposed findings, the Commission shall prepare a report which summarizes the evidence supporting the proposed findings. A copy of such report shall be served on the petitioner and made available to other parties upon request.

(h) COMMENTS ON PROPOSED FINDINGS. -- Upon publication of the proposed findings, the petitioner and other parties shall have a period of 60 days in which to submit written comments to the Commission on the proposed findings. Upon receipt of any such comments, the Commission shall promptly forward a copy to the petitioner. The petitioner shall have an additional 60 days in which to submit a response to the comments. If no written comments other than petitioner's are received within the initial 60-day comment period, the Commission shall proceed to make its determination under subsection (i) upon expiration of the initial period.

(i) DETERMINATION OF ACKNOWLEDGMENT. --

(1) In General. -- By no later than the date that is 60 days after the close of the comment period described in subsection (a)(4), including any additional period allowed for the response of petitioner, the Commission shall --

(A) make a determination of whether the petitioner should be acknowledged as an Indian tribe;

(B) publish a summary of the determination in the Federal Register; and

(C) deliver a copy of the determination and summary to the petitioner.

(2) Effective Date. -- Any determination made under paragraph (1) shall become effective on the date that is 60 days after the date on which the summary of the determination is published under paragraph

(1)(B).

(j) **RECOGNITION CRITERIA.** -- In making the proposed findings and determination under this section with respect to any petition, the Commission shall acknowledge the petitioner as an Indian tribe only if --

- (1) the petition meets all the requirements of section 6(b); and
- (2) no more than 15 percent of the petitioner's members are members of any other Indian tribe.

**SECTION 9. PROCESSING PETITIONS UNDER SECTION 6(d).**

(a) **REVIEW.** -- (1) Upon receipt of a petition in which the petitioner has elected for review under the criteria set out in section 6(b), the Commission shall conduct a review under those criteria to determine whether the petitioner is entitled to be acknowledged as an Indian tribe.

(2) The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) The Commission may also initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status and may consider any evidence which may be submitted by other parties.

(b) **NOTICE OF DEFICIENCIES.** --

(1) **In General.** -- Prior to actual consideration of the petition and by no later than the date that is 90 days after the date on which the petition is submitted or transferred to the Commission, the Commission shall notify the petitioner --

(A) of any obvious deficiencies, or significant omissions, that are apparent upon an initial review of the petition and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification; or

(B) that there are no obvious deficiencies or significant omissions in the petition.

(2) **Withdrawal; Submission of Additional Information.** -- By no later than the date that is 180 days after receipt of the notice of obvious deficiencies or significant omissions, the petitioner may either withdraw its petition or submit additional information or clarification.

(3) **Withdrawal; One Time Only.** -- A petition may be withdrawn only once without prejudice to being refiled. Any subsequent withdrawal shall be with prejudice.

(c) **CONSIDERATION.** -- Petitions under this section shall be considered in accordance with priorities set forth in section 8(c).

(d) **ACTIVE CONSIDERATION.** -- Active consideration of the petition by the Commission, including any evidence submitted by the Secretary or other parties, shall begin by no later than the date that is 45 days after --

(1) the date on which the notice that there are no obvious deficiencies or significant omissions is transmitted under subsection (b), or

(2) if there are obvious deficiencies or significant omissions in the evidence submitted by the petitioner, receipt of the petitioner's timely response to the notice transmitted under subsection (b).

(e) **NOTICE OF ACTIVE CONSIDERATION.** -- The Commission shall provide notice of the date on which the petition comes under active consideration to the petitioner, the Secretary, and other parties submitting comments on the petition.

(f) **WITHDRAWAL AND RESUBMITTAL.** -- A petitioner may, subject to the one-time withdrawal rule of subsection (b)(3) and upon written request, withdraw its petition prior to publication in the Federal Register by the Commission of proposed findings under subsection (g) and may, if it so desires, resubmit a new petition. A petitioner shall not lose its priority date by withdrawing and resubmitting its petition, but the time periods provided in subsection (g) shall begin to run anew upon active consideration

of the resubmitted petition.

(g) PROPOSED FINDINGS. --

(1) In General. -- By no later than the date that is 90 days after the date on which active consideration of the petition begins, the Commission shall --

(A) make proposed findings on the petition that either acknowledge the petitioner or determine that the Secretary, in accordance with section 6(e), has rebutted the evidence submitted by the petitioner, and

(B) publish the proposed findings in the Federal Register.

(2) Delay; Good Cause. -- The Commission may delay making proposed findings on a petition for an additional 90 days upon a showing of good cause by the petitioner.

(3) Report on Findings. -- In addition to the proposed findings, the Commission shall prepare a report which summarizes the evidence for the proposed findings. A copy of such report shall be served on the petitioner, and made available to other parties upon request.

(h) COMMENTS ON PROPOSED FINDINGS. -- Upon publication of the proposed findings the petitioner and other parties shall have a period of 60 days in which to submit written comments to the Commission on the proposed findings. Upon receipt of any such comments, the Commission shall promptly forward a copy to petitioner. The petitioner shall have an additional 60 days in which to submit a response to the comments. If no comments other than petitioner's are received within the initial 60-day comment period, the Commission shall proceed to make its determination under subsection (i) upon expiration of the initial period.

(i) DETERMINATION OF ACKNOWLEDGMENT. --

(1) In General. -- By no later than the date that is 30 days after the close of the comment period

described in subsection (g), including any additional period allowed for the response of petitioner, the Commission shall --

(A) make a determination whether the petitioner should be acknowledged as an Indian tribe;

(B) publish a summary of the determination in the Federal Register; and

(C) deliver a copy of the determination and summary to the petitioner.

(2) Effective Date. -- Any determination made under paragraph (1) shall become effective on the date that is 60 days after the date on which the summary of determination is published under paragraph (1)(B).

#### **SECTION 10. OPTIONAL PROCEDURE FOR COMPLETION OF REVIEW BY ASSISTANT SECRETARY.**

(a) REQUEST FOR REVIEW. --

(1) In General. -- Notwithstanding any other provision of this title to the contrary, any California Indian group that has a petition for federal acknowledgment pending before the Assistant Secretary on the date of enactment of this Act, and which has received and responded to a letter of obvious deficiency issued by the Assistant Secretary under 25 CFR Part 83, may request that its petition remain before the Assistant Secretary for review and decision.

(2) Specification of Review Criteria. -- The request for review and decision by the Assistant Secretary must be in writing and shall be submitted to the Assistant Secretary by no later than 90 days after enactment of this Act. The petition shall state whether the petitioner is requesting review under the criteria set out in section 6(b) or the criteria set out in section 6(d). If no request is received within this time period, the petition shall be transferred to the Commission pursuant to section 6(a)(3).

(b) REVIEW BY ASSISTANT SECRETARY. --

(1) In General. -- Upon receipt of a written request pursuant to subsection (a), the Assistant Secretary shall conduct a review under this section to determine whether the petitioner is entitled to be acknowledged as an Indian tribe.

(2) Application of Criteria. -- In reviewing the petition, the Assistant Secretary shall apply the criteria set forth in section 6(b) or 6(d), whichever is applicable, in accordance with the presumptions and burden of proof set forth in section 6.

(c) NOTICE OF DEFICIENCIES. --

(1) In General. -- Notwithstanding any previous notice of deficiencies issued under 25 CFR Part 83, the Assistant Secretary shall, by no later than the date that is 90 days after the date of receipt of a written request under subsection (a), notify the petitioner --

(A) of any obvious deficiencies, or significant omissions, that are apparent upon review of the petition under the criteria of section 6(b) or 6(d), whichever is applicable, and shall provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification; or

(B) that there any no obvious deficiencies or significant omissions in the petition.

(2) Withdrawal or Submission of Additional Information. -- By no later than the date that is 180 days after receipt of a notice of obvious deficiencies or significant omissions, the petitioner may either withdraw its petition or submit additional information or clarification. If the petitioner fails to withdraw its petition or submit additional information within the 180 day period, its petition shall be deemed to have been withdrawn.

(3) Withdrawal; One Time Only. -- A petition that is withdrawn may be resubmitted only once,

and then only in accordance with the filing and review procedures of section 6 through 9, inclusive. Any subsequent withdrawal of the petition shall be with prejudice.

(d) **CONSIDERATION.** -- Petitions filed under this section shall be considered in the order in which written requests under subsection (a) are received.

(e) **ACTIVE CONSIDERATION.** -- Active consideration of the petition by the Assistant Secretary shall begin no later than the date that is 45 days after --

(1) the date on which the notice there are no obvious deficiencies or significant omissions is transmitted under subsection (c), or

(2) if there are obvious deficiencies or significant omissions in the evidence submitted by the petition, receipt of the petitioner's timely response to the notice transmitted under subsection (c).

(f) **NOTICE OF ACTIVE CONSIDERATION.** -- The Assistant Secretary shall provide notice of the date on which the petition comes under active consideration to the petitioner and other parties submitting comments on the petition.

(g) **WITHDRAWAL AND RESUBMITTAL.** -- A petitioner may, subject to the on-time withdrawal rule of subsection (c)(3) and upon written request, withdraw its petition prior to publication in the Federal Register by the Commission of proposed findings under subsection (h) and may, if it so desires, resubmit a new petition. A petitioner shall not lose its priority date by withdrawing and resubmitting its petition, but the time periods provided in subsection (h) shall begin to run anew upon active consideration of the resubmitted petition.

(h) **PROPOSED FINDINGS AND DETERMINATION.** -- (1) Within 90 days after notifying the petitioner under subsection (f) that active consideration of the petition has begun, the Assistant Secretary shall make proposed findings on the petition and shall publish the proposed findings in the Federal Register.

(2) In all other respects, the review, findings and determination of acknowledgment shall be subject to and follow the provisions of section 8 or 9, whichever is applicable, except that wherever the term "Commission" is used, it is intended and understood that the term "Assistant Secretary" shall be substituted.

## **SECTION 11. GENERAL PROVISIONS.**

(a) **NOTIFICATION OF OTHER OPTIONS.** -- If the Commission determines under the criteria of either subsection 6(b) or 6(d) that the petitioner should not be acknowledged as an Indian tribe, the Commission shall analyze and forward to the petitioner other options, if any, under which application for services and other benefits of the Bureau may be made.

(b) **SITUATIONS NOT AFFECTED BY DETERMINATION.** -- A determination by the Commission that a California Indian group is acknowledged by the Federal Government as an Indian tribe shall not have the effect of depriving or diminishing --

(1) the right of any other Indian tribe to govern its reservation as such reservation existed prior to the acknowledgment of such California Indian group;

(2) any property right held in trust or recognized by the United States for such other Indian tribe prior to the acknowledgment of such California Indian group; or

(3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for such other Indian tribe prior to the acknowledgment of such California Indian group.

## **SECTION 12. APPEALS.**

(a) **IN GENERAL.** -- Not later than 60 days after the date on which the summary of the determination of the Commission or the Assistant Secretary with respect to a petition is published under section 8(i) or 9(i), the petitioner may appeal the determination to the United States District Court for the

district in which the petitioner resides.

(b) **ATTORNEY FEES AND COSTS.** -- If the petitioner prevails in an appeal made under subsection (a), the petitioner shall be eligible for an award of reasonable attorney fees and costs under section 504 of title 5, United States Code, or section 2412 of title 28, United States Code, whichever is applicable.

### **SECTION 13. IMPLEMENTATION OF DECISIONS.**

(a) **ELIGIBILITY FOR SERVICES AND BENEFITS.** --

(1) **In General.** -- Subject to paragraph (2), upon acknowledgment by the Commission or the Assistant Secretary that the petitioner is an Indian tribe, the Indian tribe shall --

(A) be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; and

(B) have the responsibilities, obligations, and immunities of such Indian tribes.

(2) **Programs of the Bureau.** --

(A) **In General.** -- The recognition of an Indian group as an Indian tribe by the Commission under this Act shall not create an immediate entitlement to programs of the Bureau in existence on the date of the recognition.

(B) **Availability of Programs.** --

(i) **In General.** -- The programs described in subparagraph (A) shall become available to the Indian group upon the appropriation of funds for this purpose.

(ii) **Requests for Appropriations.** -- The Secretary and the Secretary of Health and Human Services shall forward budget requests for funding the programs for the Indian tribe pursuant to the needs determination procedures established under subsection (b).

(b) **NEEDS DETERMINATION AND BUDGET REQUEST. --**

(1) **In General.** -- Not later than 180 days after an Indian group is acknowledged by the Commission as an Indian tribe under this Act, the appropriate officers of the Bureau of Indian Affairs and the Indian Health Service of the Department of Health and Human Services shall consult and develop in cooperation with the Indian tribe, and forward to the Secretary or the Secretary of Health and Human Services, as appropriate, a determination of the needs of the Indian tribe and a recommended budget required to serve the tribe.

(2) **Submission of Budget Request.** -- Upon receipt of the information described in paragraph (1), the Appropriate Secretary shall submit to the President a recommended budget along with recommendations, concerning the information received under paragraph (1), for inclusion in the annual budget submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

**SECTION 14. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.**

(a) **LIST OF RECOGNIZED TRIBES.** -- Not later than 90 days after the first meeting of the Commission, and annually on or before each January 30 thereafter, the Commission shall publish in the Federal Register a list of all Indian tribes that --

(1) are recognized by the Federal Government; and

(2) receive services from the Bureau.

(b) **ANNUAL REPORT. --**

(1) **In General.** -- Beginning on the date that is one year after the date of the enactment of this Act, and annually thereafter, the Commission shall prepare a report that describes the activities of the Commission and shall submit it to the Committee on Indian Affairs of the Senate and the Committee on

Resources of the House of Representatives.

(2) Content of Reports. -- Each report submitted under this subsection shall include, at a minimum, for the year that is the subject of the report --

(A) the number of petitions pending at the beginning of the year and the names of the petitioners;

(B) the number of petitions received during the year and the names of the petitioners;

(C) the number of petitions the Commission approved for acknowledgment during the year and the names of the acknowledged petitioners;

(D) the number of petitions the Commission denied for acknowledgment during the year and the names of the petitioners;

(E) the status of all pending petitions on the date of the report and the names of the petitioners; and

(F) the number of petitions retained by the Assistant Secretary under the optional review procedures of Section 10 and the status of each petition.

## **SECTION 15. ACTIONS BY PETITIONERS FOR ENFORCEMENT.**

Any petitioner may bring an action in the United States District Court for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act, and the district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act. For purposes of enforcement of any time limitations which this Act imposes upon the Commission, Assistant Secretary, Bureau of Indian Affairs or other governmental entity, because of the remedial nature of this Act, time is of the essence.

## **SECTION 16. REGULATIONS.**

The Commission may, in accordance with applicable requirements of title 5, United States Code, promulgate and publish such regulations as may be necessary to carry out this Act.

## **SECTION 17. GUIDELINES AND ADVICE.**

(a) **GUIDELINES.** -- No later than 90 days after the first meeting of the Commission, the Commission shall make available to California Indian groups suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research information that is required to be included in the petition. The examples included in the guidelines shall not preclude the use of any other format.

(b) **RESEARCH ADVICE.** -- The Commission may, upon request, provide suggestions and advice to any petitioner with respect to the research of the petitioner concerning the historical background and Indian identity of such petitioner. The Commission shall not be responsible for conducting research on behalf of the petitioner.

## **SECTION 18. ASSISTANCE TO PETITIONERS.**

(a) **GRANTS.** --

(1) **In General.** -- The Secretary of Health and Human Services may award grants to California Indian groups seeking Federal acknowledgment to enable the California Indian groups to --

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) **Treatment of Grants.** -- The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) **COMPETITIVE AWARD.** -- Grants provided under subsection (a) shall be awarded

competitively based on objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services, except that preference shall be given to petitioners --

(1) who have submitted a petition to the Bureau of Indian Affairs under 25 CFR Part 83, not including a letter of intent which has not been substantiated by accompanying documentation addressing each of the criteria set forth in section 6(b) or (d);

(2) whose petition has not been finally determined; and

(3) who are either awaiting, or have already been the subject of, a letter citing obvious deficiencies or significant omissions.

#### **SECTION 19. MEMBERSHIP ROLLS.**

(a) **COMPILATION FOR EACH GROUP ACKNOWLEDGED.** -- Within one year of its acknowledgment under this Act, each California Indian group acknowledged under this Act as an Indian tribe shall submit to the Secretary a duly-certified current membership roll adopted according to its tribal enrollment and membership ordinance, its relevant constitutional provision(s), or, alternatively, its traditional custom and usage binding at the time. The Secretary shall maintain a record of the rolls submitted by each Indian tribe acknowledged under this Act.

(b) **QUALIFICATIONS FOR MEMBERSHIP.** -- The qualifications for inclusion on the membership roll under subsection (a) shall be determined by the council or governing body of the newly acknowledged Indian tribe, except that --

(1) until a tribal constitution is adopted, or, in the case of those newly acknowledged California Indian tribes who govern by custom and tradition, until the tribal governing body establishes official criteria for membership, a person accepted as a member by the Indian tribe shall be placed on the membership roll only if the individual is living and is not enrolled as a member of another Indian tribe; and

(2) after the newly acknowledged Indian tribe adopts a tribal constitution or official membership criteria, that constitution or those criteria, as the case may be, shall govern membership in the Indian tribe.

(c) **COMPLETION DEADLINE.** -- The membership roll for an Indian tribe acknowledged under this Act required to be compiled under subsection (a) shall be completed by no later than the date that is one year after the date of such acknowledgment.

## **SECTION 20. ECONOMIC DEVELOPMENT PLANS.**

(a) **IN GENERAL.** -- The Secretary shall --

(1) upon written request of an Indian tribe acknowledged under this Act, enter into negotiations and consultation with the governing body of such tribe to develop a plan for economic development for the tribe;

(2) in accordance with this section, develop such a plan; and

(3) upon the approval of such plan by the governing body of the newly acknowledged Indian tribe, submit such plan to the Congress by no later than three years after the date of acknowledgment under this Act.

(b) **REQUIRED PROVISIONS OF PLAN.** -- Any economic development plan developed by a newly acknowledged Indian tribe and the Secretary under subsection (a) shall provide that --

(1) real property acquired by or for the newly acknowledged Indian tribe be taken by the Secretary in trust for the benefit of the Indian tribe; and

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to --

(A) all legal rights and interests in such land held by any person at the time of acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax; and

(B) foreclosure or sale in accordance with the laws of the State of California pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary.

Any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

## **SECTION 21. AUTHORIZATION OF APPROPRIATIONS.**

(a) COMMISSION. -- There are authorized to be appropriated for the Commission for the purpose of carrying out the provisions of this Act (other than section 213), \$1,500,000 for the fiscal year in which this Act is enacted and for each of the 12 succeeding fiscal years.

(b) SECRETARY OF HEALTH AND HUMAN SERVICES. -- There are authorized to be appropriated for the Administration of Native Americans of the Department of Health and Human Services for the purpose of carrying out the provisions of section 17, \$500,000 for the fiscal year in which this Act is enacted and for each of the 12 succeeding fiscal years.

SUMMARY STATUS  
of  
ACKNOWLEDGMENT CASES  
(as of February 13, 1997)

	Totals	
PETITIONS ON ACTIVE STATUS		Petitions on Active = 15
<u>BAR's Action Items</u>	9	
Proposed Findings in Progress:	6	
Final Determinations Pending:	3	
<u>Petitioner's Action Items</u>	7	
Commenting on Proposed Finding	7	

PETITIONS READY FOR ACTIVE		Petitions Ready = 9
----------------------------	--	---------------------

OTHER PETITIONS*		Other Petitions = 122
Incomplete Petitions (not ready)	35	
Letters of Intent to Petition	84	
[Incomplete Letters of Intent to Petition	3]	

RECONSIDERATION REQUEST BEFORE IBIA		Reconsideration requests = 2
-------------------------------------	--	------------------------------

IN LITIGATION		Cases being litigated = 1
---------------	--	---------------------------

PETITIONS RESOLVED		Petitions Resolved = 37
--------------------	--	-------------------------

<u>By Department</u>		28
Through Acknowledgment Process:		25
Acknowledged	12	
Denied Acknowledgment	13	
Status Clarified by Legislation		
at Department's Request		1
Status Clarified by Other Means		2
<u>By Congress</u>		7
Legislative Restoration		1
Legislative Recognition		6
<u>By Other Means</u>		2
Merged with another petitioner		2

LEGISLATIVE ACTION REQUIRED		Legislative action required = 6
-----------------------------	--	---------------------------------

<u>Petitions requiring legislation</u>		6
(to permit processing under 25 CFR 83)		

HISTORICAL NOTE:

40	petitions on hand when Acknowledgment staff organized Oct 1978
145	new petitioners since Oct 1978
185*	Total petitions received to date

\* includes 14 groups that initially petitioned as part of other groups but have since split off to petition separately.

PETITIONS ACTIVE, READY  
OR IN LITIGATION  
(as of February 13, 1997)

ACTIVE STATUS

Proposed Finding in Progress - 6  
Members

c1200 Chinook Indian Tribe, Inc., WA (#57) (Active 1/28/94)  
c 750 Steilacoom Tribe, WA (#11) (Active 7/11/95)  
c 560 Nipmuc Nation (Hassanamisco Band), MA (#69a) (Active 7/11/95)  
c 335 Nipmuck Nation, Chaubunagungamaug Band, MA (#69b) (Active 7/11/95;  
separated from the Nipmuc Nation (Hassanamisco Band) 5/31/96)  
c 180 Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians of MI (formerly, Gun  
Lake Village Band... (#9a) (Active 12/24/96)  
c2000 Little Shell Tribe of Chippewa Indians of MT (#31) (Active 2/12/1997)

Petitioner Commenting on Proposed Finding - 6

836 Snohomish Tribe of Indians, WA (#12) (Active 1/7/81; proposed negative  
finding pub'd 4/11/83; edited staff notes provided 3/25/91; comment  
period reopened 12/1/91, extended indefinitely at petitioner's request  
pending resolution of Samish litigation)  
--- Biloxi, Chitimacha Confederation of Muskogees, Inc. (#56a) (Withdrew from  
the United Houma Nation, Inc. 9/6/95; responding to same Proposed  
Finding; comment period closed 6/13/96; extended to 5/12/1997)  
--- Point Au Chien Indian Tribe (#56b) (Withdrew from the United Houma  
Nation, Inc. 7/22/1996; responding to same Proposed Finding; comment  
period extended to 11/13/96)  
165 Yuchi Tribal Organization, OK (#121) (complete 4/23/93; proposed negative  
finding pub'd 10/24/95; comment period closed 4/22/96; comment period  
extended to 11/29/96; petitioner's response to comments due 5/5/97)  
356 Duwamish Indian Tribe, WA (#25) (Active 5/1/92; proposed negative finding  
pub'd 6/28/96; comment period closes 2/25/97)  
1517 Cowlitz Tribe of Indians, WA (#16) (Active 7/11/95; proposed positive  
finding signed by AS-IA 2/12/97)

Final Determination Pending - 3

313 Snoqualmie Indian Tribe, WA (#20) (Active 5/21/90; proposed positive  
finding pub'd 5/6/93; comment period extended; comment closed 9/8/95;  
preparation of final determination begun 3/1/96)  
c4000 MOWA Band of Choctaw, AL (#86) (proposed negative finding pub'd 1/5/95;  
comment period closed 7/5/95; extended to 1/02/96; comment period  
closed 7/1/96)  
17616 United Houma Nation, Inc., LA (#56) (Active 5/20/91; proposed negative  
finding pub'd 12/22/94; comment period closed 11/13/96; respn to 3rd-  
party comments 2/4/97)

Reconsideration Request Before IBIA - 2

c2500 Ramapough Mountain Indians, Inc., NJ (#58) (negative final determination  
pub'd 2/6/96; eff 5/6/96; petitioner requested reconsideration from  
IBIA 5/6/96)  
82 Golden Hill Paugussett Tribe, CT (#81) (negative final determination  
pub'd 9/26/96; eff 12/26/96; petitioner requested reconsideration from  
IBIA 12/26/96)

## READY STATUS

### Ready, Waiting for Active Consideration - 9

Petitioners have corrected deficiencies and/or stated their petition should be considered "ready" for active consideration. Priority among "ready" petitions is based on the date the petition is determined "ready" by the Branch of Acknowledgment and Research (BAR).

<u>Ready Date</u>	<u>Name of Petitioner</u>
10/4/95	Eastern Pequot Indians of Connecticut, CT (#35) (doc'n recv'd 5/5/89; OD ltr 3/13/90; partial resp recev'd 5/2/95; resp recv'd 10/4/95; complete)
10/26/95	Burt Lake Band of Ottawa and Chippewa Indians, Inc., MI (#101) (09/12/1985; doc'n rec'd 9/40/95; TA ltr 4/5/95; response 10/26/95; complete)
1/17/96	St. Francis/Sokoki Band of Abenakis of VT (#68) (OD ltr 6/14/83; "ready" 8/1/86; petitioner says "not ready" 9/18/90; complete 1/17/96)
2/12/96	Juaneno Band of Mission Indians, CA (#84a) (doc'n recv'd 2/24/88; OD ltr 1/25/90; rspn recv'd 9/24/93, complete; removed from "ready" list 03/19/95; respn recv'd 9/28/95)
2/14/96	Mashpee Wampanoag, MA (#15) (doc'n recv'd 8/16/90; OD ltr 7/30/91; respn recv'd 1/24/96; ready 2/14/96)
2/28/96	Brothertown Indians of Wisconsin, WI (#67) (4/15/80; doc'n recv'd 2/13/96; ready 2/28/96)
5/10/96	Paucatuck Eastern Pequot Indians of CT (#113) (6/20/89; doc'n recv'd 4/21/94; TA ltr 9/ /94; respn recv'd 2/26/96 and 3/20/96)
5/23/96	Juaneno Band of Mission Indians, CA (#84b) (withdrew from #84a 12/17/94; formal letter of intent 3/8/96; doc'n recv'd 3/8/96; TA ltr 5/15/96; respn recv'd 5/23/96)
7/30/96	Tolowa Nation, CA (#85) (1/31/83; doc'n recv'd 5/12/86; OD ltr 4/6/88; respn recv'd 8/22/95 and 11/22/95; limited TA ltr 5/16/96; respn recv'd 7/30/96)

### PETITIONS RESOLVED (as of February 13, 1997)

### RESOLVED BY DEPARTMENT - 28

### Acknowledged through 25 CFR 83 - 12

#### Members

297	Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)
175	Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)
200	Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)
199	Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83)
1170	Narragansett Indian Tribe, RI (#59) (eff. 4/11/83)
1470	Poarch Band of Creeks, AL (#13) (eff. 8/10/84)
521	Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87)
188	San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90)
972	Mohegan Indian Tribe, CT (#38) (eff. 5/14/94)
189	Jena Band of Choctaws, LA (#45) (eff. 8/29/95)
---	Samish Indian Tribe, WA (#14) (A final determination to decline to acknowledge was published in the <u>Federal Register</u> February 5, 1987 (52 FR 3709); vacated in <u>Greene v. United States</u> 1992; final determination to acknowledge; eff. 4/26/96)
602	Huron Potawatomi Inc., MI (#9) (eff. 3/17/96)

Denied acknowledgment through 25 CFR 83 - 13

1041 Lower Muskogee Creek Tribe-East of the MS, GA (#8) (eff. 12/21/81)  
2696 Creeks East of the Mississippi, FL (#10) (eff. 12/21/81)  
34 Munsee-Thames River Delaware, CO (#26) (eff. 1/3/83)  
324 Principal Creek Indian Nation, AL (#7) (eff. 6/10/85)  
1530 Kaweah Indian Nation, CA (#70a) (eff. 6/10/85)  
1321 United Lumbee Nation of NC and America, CA (#70) (eff. 7/2/85)  
823 Southeastern Cherokee Confederacy (SECC), GA (#29) (eff. 11/25/85)  
[Name changed 1996 to American Cherokee Confederacy]  
609 Northwest Cherokee Wolf Band, SECC, OR (#29a) (eff. 11/25/85)  
87 Red Clay Inter-tribal Indian Band, SECC, TN (#29b) (eff. 11/25/85)  
304 Tchinouk Indians, OR (#52) (eff. 3/17/86)  
275 MaChis Lower AL Creek Indian Tribe, AL (#87) (eff. 8/22/88)  
4381 Miami Nation of Indians of IN, Inc., IN (#66) (eff. 8/17/92)

IN LITIGATION

Miami Nation of Indians of IN (#66) (Denied Acknowledgment eff. 8/17/92)

Status Clarified by Legislation at Department's Request - 1

c224 Lac Vieux Desert Band of Lake Superior Chippewa Indians, MI (#6)  
(legis clarification of recog'n status 9/8/88)

Status Clarified by Other Means - 2

650 Texas Band of Traditional Kickapoos, TX (#54) (determined part of  
recognized tribe 9/14/81; petition withdrawn)  
32 Ione Band of Miwok Indians, CA (#2) (Status confirmed by Assistant  
Secretary 3/22/94)

RESOLVED BY CONGRESS - 7

Legislative Restoration - 1

328 Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, OR  
(#17) (legis restoration 10/17/84)

Legislative Recognition - 6

651 Cow Creek Band of Umpqua Indians, OR (#72) (legis recog'n 12/29/82)  
55 Western (Mashantucket) Pequot Tribe, CT (#42) (legis recog'n 10/18/83  
in association with eastern land claims suit)  
611 Arcostook Band of Micmacs, ME (#103) (legis recog'n 11/26/91)  
c2500 Pokagon Potawatomi Indians of Indiana & Michigan, IN (#75/78) (legis  
recog'n 9/21/94)  
— Little Traverse Bay Bands of Odawa Indians, MI (#115) (legis recog'n  
9/21/94)  
— Little River Band of Ottawa Indians, MI (#125) (legis recog'n  
9/21/94)

RESOLVED BY OTHER MEANS - 1

Petition withdrawn (merged with another petition) - 1

Potawatomi Indians of IN & MI, Inc., MI (#75) and Potawatomi Indian  
Nation, Inc. (Pokagon), MI (#78) merged; became Pokagon... (#78)

list, with one or two exceptions. The petition needs to provide specific evidence, through documentation and/or oral history, for including leaders on this list, and describe how they functioned as leaders during each historical period. Were there other important leaders or influential individuals besides the ceremonial leaders?

The historical periods during which the leaders functioned also need to be better delineated. For instance, the list of chiefs on page 11 notes that Frank Schulte was the Coyote Chief and Frank Jim was the Eagle Chief from "1800's to 1920's"; Johnny Sherman is listed as Coyote Chief from "1920's to 1980's." These are rather broad time periods. Please provide more specific dates for the leadership of the individuals on the list. The same problem exists with the list of "Indian Doctors" on page 13; four individuals are listed as being active from "1800's to 1940's."

3. Descriptions and examples of past ceremonies may be a useful method to show that in the past the North Fork families worked together for group purposes and to show the influence of leaders. Thus you may wish to cite examples of ceremonials held in the past to demonstrate community and political authority.
4. To help understand the functioning of tribal political authority in recent times and in the modern community, the petition must address how the museum association was formed and has functioned as the group's tribal council, and what the Council's relationship has been to the traditional leadership. Please describe the processes forming the association. Similarly, describe how the current tribal council and chairman form of government was formed in 1984. By indicating who the influential figures or groups within the community were in these events, what the community interests and issues were, and how the membership was involved in these decisions, tribal political processes would be demonstrated. Other questions to ask include how does the current council function, i.e., what issues does it address, and how is the membership involved in council decisions. What is the relationship of the council to the traditional ceremonial leadership and how do they interact and/or overlap?

#### GOVERNING DOCUMENT

The petition states that the North Fork Mono are governed by a constitution. However, the constitution provided is undated and unexecuted and appears to be a proposed constitution to be executed at a later date. In lieu of a formal governing document, the regulations require a "statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members" (83.7(d)). Please provide such a statement if the constitution has not been adopted as the governing document. Explain in detail the process by

which the North Fork Mono determine eligibility for membership and who is making such determinations. Are persons who apply for membership required to complete an application form? If so, provide five or six examples of completed applications which have been filed by persons who have been accepted for membership.

## MEMBERSHIP LISTS, PRESENT AND PAST

### Present Membership List

1. The Acknowledgment criterion 83.7(e) states that a petition must include a list of all known current members as well as copies of each available former list of members based on the group's own criteria. The list of current North Fork Mono members submitted with the petition provides only the names of members, but no other identifying personal information. As presented in this very limited format, it will be virtually impossible to accurately verify and chart the identity and interrelationships of the group's members.
2. Please redo your list of the group's current members to include the member's full name (including maiden name), residence address, date of birth, and the names of the individual's father and mother. Prior to resubmission, the list should be dated and certified by your governing body as to its accuracy and completeness.
3. During the process of redoing your current membership list, please pay particular attention to the following potential problem areas noted:
  - a. At least eight names on the list submitted with the petition are believed to appear more than once. We are unable to verify their possible duplication, however, for lack of additional identifying personal information.
  - b. Based on genealogical information provided elsewhere in the petition, at least 20 members now listed appear to be deceased. As near as possible, the list of current members should include only persons living at the time the list is prepared.
  - c. We note that the names of approximately 110 children and siblings, who appear on the Individual History Charts of persons listed on the current membership list, do not now appear on the membership list. We grant that the Individual History Chart is designed to collect information about all of an individual's children, parents, and siblings, living and deceased, and further that all relations listed on the form need not be members of the group. However, we are concerned that the 110 unlisted children and siblings who are considered members may have been omitted inadvertently during preparation of the list.
  - d. At least ten members on the current list do not appear on Individual History or Ancestry charts provided with the petition.

4. The absence of a complete membership list makes it virtually impossible for our genealogists to be certain whether there is sufficient genealogical information to diagram the ancestry of members and their relationships to the historic tribe. Because we cannot be entirely sure at this time, we reserve the right to request more information at a later date should it be needed.

#### Former Membership Lists.

Criterion 83.7(e) also requires that a copy of all available former lists of a group's members be submitted with the petition. Please provide any former lists of members (censuses, etc.).

#### THE 1928 APPLICATIONS

1. Our brief review of the petition indicates that several additional 1928 applications which were not submitted could shed more light on the ancestry of current North Fork Mono members. Please provide copies of the following additional applications, if possible:

# 2528  
# 7908  
# 9791  
#10050  
#10384

Nellie Camino  
Jim Cheepo  
Mae Alice Cheepo  
Charlie Bounds  
Henry D. Coleman  
Belva Fuller  
William Crume

If you experience any difficulty in obtaining the above applications, we suggest you write to Ms. Marty Kaiser, c/o Bureau of Indian Affairs, Sacramento Area Office, 2800 Cottage Way, Sacramento, CA 95825.

2. Several of the 1928 applications identify Susie and Sam Sample as ancestors, others identify a Susie and Sam Sambo. There was also a Sambo Sam. What relationship, if any, exists between the Samples, the Sambos, and Sambo Sam?

#### DOCUMENTATION

1. As noted above, a number of useful documents were provided with the petition which could assist the group and its researchers in developing a more complete petition narrative, as well as indicate where more sources of information could be found. We understand that the North Fork may have considerable additional materials not submitted with the petition. We strongly recommend that the assistance of a professional researcher be obtained to assist the group in organizing the extensive materials it has already obtained and extracting the maximum useful data within those materials, as well as to conduct additional documentary and interview research to obtain necessary information.

2. Many of the documents included in the petition are not as directly focused on the requirements of the regulations as is desirable. In a separate attachment to this letter, we are providing some clarification, in order for the group to make the best use of its resources.

If your group chooses to respond to this OD review letter, we encourage you and your researchers to consult with BAR staff before preparing a response, so that you might utilize your research resources more effectively. BAR can provide technical assistance, but cannot be responsible for actual research on the part of the petitioner. During active consideration, your petition will be thoroughly reviewed and evaluated to determine whether the group meets the requirements to be acknowledged as an Indian tribe. It may be necessary to request additional information during the course of active consideration. The BAR will make every effort to consult with you and your researchers regarding questions raised in this letter and those that might be raised during active consideration of your petition prior to the publication of a proposed finding.

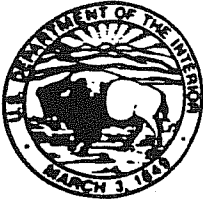
We recommend that you contact Michael Lawson, the Acknowledgment staff member who has administrative responsibility for California petitioners, so that we can make arrangements to provide additional technical assistance to you and your researchers. You may write him c/o Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 2612-MIB, 1849 C Street, N.W., Washington, D.C. 20240, or call him at (202) 208-3592.

Sincerely,

/s/ CAROL A. BACON

 Director, Office of Tribal Services

Enclosure



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240



IN REPLY REFER TO:

Tribal Government Services - AR  
MS-4641

Ms. Sonia Johnston  
P. O. Box 25628  
Santa Ana, California 92799

MAY 15 1995

Dear Ms. Johnston:

Thank you for submitting a documented petition for Federal acknowledgment as an Indian tribe for the Juaneno Band of Mission Indians (#84-B). The Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR) has completed an initial review of your petition, as required under section 83.10(b) of the acknowledgment regulations (25 CFR Part 83). This technical assistance letter describes any obvious deficiencies or significant omissions apparent in your petition.

The technical assistance (TA) review is a limited, preliminary review by a staff anthropologist, genealogist, and historian. Only when a petition is placed under "active consideration" is it reviewed and evaluated in depth by the BAR staff to determine whether or not the petitioning group meets the requirements to be acknowledged as an Indian tribe. Thus, the TA review is not a preliminary determination of the merits of your case.

The acknowledgment regulations provide a TA review to ensure that your petition will be considered on its merits and will not be rejected after active consideration because of technical problems in your petition or your lack of awareness that you need to provide evidence that you meet the seven mandatory criteria for Federal acknowledgment. The TA review gives you an opportunity to do further work on your documented petition and to submit additional information and clarification prior to the active consideration period when your case will be evaluated on its merits.

Your documented petition consists of a "Petition" volume, a "Revision & Clarification" volume, and a "Brief Narrative" received on March 8, 1996, and an "Addendum" volume received on February 24, 1995; an "Updated Base Tribal Membership List" and a "Supplemental A Tribal Membership List" received on February 24, 1995, and an "Updated Supplemental A Membership List" received on October 6, 1995; two volumes of "Ancestry Charts for the Base Enrollment" received on March 8, 1996, and two volumes of "Ancestry Charts for the Supplemental A Membership List" received on October 6, 1995; and two packages of computer disks of genealogical information.

As required by criterion (d), you have submitted a copy of your 1979 constitution, which includes your membership criteria. As required for the evaluation of criterion (e), you have supplied a membership list for your group. It appears that you also have provided an ancestry chart for each individual on the membership list. Thus, you have submitted the basic information we will need to identify your members and to trace their descent from an historical Indian tribe. During active consideration of your petition, we may request samples of the supporting documentation and evidence you have used to establish an individual's Juaneno descent. The BAR genealogist also will visit your group to examine the documentation in your membership files.

Whether you have supplied sufficient evidence for us to evaluate your petition under criteria (a), (b), and (c), however, is much less clear. Your Petition, Revision, and Addendum volumes provide some information about the historical tribe and its relation to the mission at San Juan Capistrano in the 19th century, and some information about dealings on behalf of Juaneno descendants with outside organizations in the 20th century. You have not given us, however, any description of the Juaneno community itself during the 20th century. To evaluate your petition, especially under criterion (b), we will need some examples of how members interact with other members in community activities, and some examples of the practices or events which demonstrate that your members are part of a community which is distinct from the surrounding population. With the sole exception of a detailed account of the leadership dispute with David Belardes over the last several years, you have not given us any description of leadership or political influence, whether formal or informal, within the group. To evaluate your petition, especially under criterion (c), we will need some examples of how the group has maintained political influence over its members throughout history.

In addition, you have supplied copies of very few of the historical documents cited in your Petition volume. Since many of these items are from collections which are not easily accessible to the BAR researchers, it would improve our ability to evaluate your petition if you were able to make copies of these documents available to us.

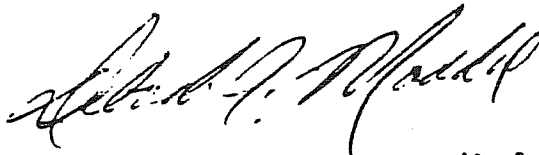
After considering this TA review of your petition, you have two options. You may respond in part or in full to the TA review by supplying additional text and documentation, or you may request, in writing, that the Assistant Secretary - Indian Affairs proceed with the active consideration of your documented petition using the materials you already have submitted. Despite the concerns we have expressed above, if you request that we put your petition on the list of petitions considered to be "ready" for active consideration, we will do so.

If you respond to the TA review, this does not imply in any way that your group meets the seven mandatory criteria simply by submitting additional data. You may request that the BAR also review the materials you submit in response to the TA review for their adequacy. An additional TA review will not be automatic, but will be conducted only at your request. However, you must take into consideration the limitations of these preliminary reviews. They cannot anticipate all of the questions that an in-depth review during active consideration might raise about your petition.

The BAR staff will fully evaluate your petition when it is placed under active consideration. The BAR's research during the active consideration period is to verify or elaborate on your already completed petition. The BAR's case load no longer permits it to do the research necessary to fill in gaps in your petition on your behalf to the extent it sometimes has done in the past.

Once you have had an opportunity to review this letter thoroughly and to share its contents with your members and researchers, we recommend that you contact the BAR staff so that we can make arrangements to provide additional technical assistance to you and your researchers. Please contact the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street N.W., Mail Stop 4641-MIB, Washington, D.C. 20240, or call (202) 208-3592.

Sincerely,



Director, Office of Tribal Services





