



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

DEC 27 2000

Memorandum

To: Deputy Commissioner of Indian Affairs
Through: Acting Director, Office of Tribal Services
From: Chief, Branch of Acknowledgment and Research
Subject: "Reaffirmations"

The Branch of Acknowledgment and Research (BAR) and the Office of Tribal Services are greatly concerned with the rumored "reaffirmation" of several groups as federally recognized tribes. We are troubled by the possibility that the Department is about to take the action of "reaffirmation" rather than resolving the status of these groups through 25 CFR Part 83 regulations. We also are concerned that this action may be taken without a thorough factual and legal review. We have heard that the groups affected are:

- 1) Burt Lake in Michigan, Petition #101, next in line for a proposed finding
- 2) Lower Lake in California, not on list of petitioners
- 3) Shoonaq' in Alaska, not on list of petitioners
- 4) King Salmon in Alaska, not on list of petitioners

Unless the Assistant Secretary - Indian Affairs (AS-IA) has clear authority to act outside the acknowledgment regulations, and has conducted a competent, neutral study of the facts in these cases, the Department's credibility as an unbiased agency tasked with acknowledging tribes will be damaged by an arbitrary acknowledgment of these select groups.

To our knowledge, there has never been a formal opinion from the Department's Solicitor as to whether the Department's authority to acknowledge tribes can be exercised by the AS-IA outside of the regulations, or whether the establishment of the regulations precludes acknowledgment by simple administrative action. There presumably has been no opportunity for third parties to comment on any of these proposed "reaffirmations," which likely would constitute a violation of the Administrative Procedures Act (APA).

A thorough review of the claims of these groups is necessary because court precedents and past Department decisions, which pre-date the acknowledgment regulations, have established the principle that ancestry from a once-recognized tribe does not by itself give the Department authority to recognize a group of descendants as a sovereign entity, absent the group's continuing existence as a distinct political community.

Exemption 5: Internal Deliberative Process - _____ pages withheld.

LOWER LAKE RANCHERIA

The Lower Lake Rancheria - Koi Nation group is located in California and is not a petitioning group under 25 CFR Part 83. In September 2000, the Pacific Regional Office at the request of Central Office submitted a recommendation for "administrative reaffirmation." The Pacific Region submitted "documentation compiled by the Central California Agency to support the reaffirmation of Federal recognition of the Lower Lake Rancheria." However, BAR had previously conducted a preliminary review of the group's membership and genealogy and had serious questions regarding possible dual enrollment with, and descent from, other federally recognized tribes, such as:

- 5) Big Valley Band of Pomo Indians of the Big Valley Rancheria,
- 6) Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria,
- 7) Hopland Band of Pomo Indians of the Hopland Rancheria,
- 8) Middletown Rancheria of Pomo Indians of California,
- 9) Robinson Rancheria of Pomo Indians of California, and
- 10) Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

The Office of Tribal Services received copies of several substantially different membership lists and copies of application files for each current member of Lower Lake. Almost a 50 percent reduction in the number of members occurred between the November 1999 submission and the December 1999 submission.

We suggest that:

- The Lower Lake group needs to explain the 50 percent reduction in membership and the possible dual enrollment of its members in the above mentioned rancherias.