

SEP 14 2000

Superintendent, Central California Agency

Administrative Reaffirmation of Federal Recognition - Lower Lake Rancheria

Regional Director, Pacific Region
Attention: Branch of Tribal Operations

The purpose of this memorandum is to recommend that the Bureau of Indian Affairs administratively reaffirm that the Lower Lake Rancheria is a federally recognized tribe. The Central California Agency (Agency) researched the history of federal relations between the Tribe and the Bureau of Indian Affairs (BIA) and legislative history of the congressional act authorizing the disposition of the Lower Lake Rancheria, in order to ascertain whether the Tribe may be improperly considered terminated. As a result of this research and analysis, the Agency strongly recommends administrative reaffirmation of the Lower Lake Rancheria.

The issue of whether the Lower Lake Rancheria may be properly considered terminated arose as a result of a continuing initiative of the Assistant Secretary - Indian Affairs to pursue the legislative restoration of a number of tribes presently viewed as terminated. In October 1999, Loretta Tuell, Acting Director, Office of Tribal Services, BIA, met with staff of the Pacific Region and its agencies, describing the purpose of the initiative. Ms. Tuell requested a review of the present situation of the remaining terminated tribes and recommend whether or not to include a given tribe in the initiative.

However, upon review of the list of the remaining terminated tribes, the Lower Lake Rancheria was identified as a special situation. All of the other tribes on the list are considered terminated under the terms of P.L. 85-671 (72 Stat. 619), as amended by P.L. 88-419 (78 Stat. 390), commonly referred to as the Rancheria Act. But the Lower Lake Rancheria was sold pursuant to P.L. 84-443 (70 Stat. 58), as amended by P.L. 84-751 (70 Stat. 595). Both P.L. 84-443 and P.L. 84-751 predate the passage of the Rancheria Act. This special situation, Ms. Tuell agreed, would require additional investigation.

In early September 1999, elected officials of the Lower Lake Rancheria requested a meeting with Ms. Tuell. On November 19, 1999, such a meeting was convened in Healdsburg, California. The following persons were present at the meeting:

For the Bureau of Indian Affairs:

Loretta Tuell, Acting Director, Office of Tribal Services
Lee Fleming, Chief, Branch of Acknowledgement and Research
Brian Golding, Sr., Tribal Operations Specialist, Central California Agency

For the Lower Lake Rancheria:

Dino Beltran, Chairperson
Dan Beltran, Vice-Chairperson
Lester J. Marsten, Attorney at Law, Rapport & Marsten

As a result of the meeting, the following understanding was achieved:

1. Preliminary research suggests that, although portions of the Lower Lake Rancheria were sold and fee patented, the effect of those conveyances should not be presently considered as termination of the Lower Lake Rancheria;
2. Additional research would be conducted, with the Lower Lake Rancheria submitting enrollment and genealogical information to Mr. Fleming for his review and recommendation, and Mr. Golding would compile his research into a memorandum to be forwarded through the Regional Director, Pacific Region, to the Central Office for action;
3. Should additional research strongly suggest that the Lower Lake Rancheria should not be presently considered as terminated, administrative reaffirmation of the Tribe's federal recognition would be sought.

The Purchase, Use, and Transfer of the Lower Lake Rancheria:

The Lower Lake Rancheria, containing approximately 141 acres, was purchased by the United States on January 25, 1916, with funds appropriated by the Act of August 1, 1914 (38 Stat. 582, 589), for the purchase of land for the homeless Indians of California. A plat prepared by Inspector J.J. Terrell in July 1917 shows the tract subdivided into assignments as he contemplated them (see Appendix 1).

Records of the Bureau of Indian Affairs (BIA) indicate that the land was uninhabited between 1916 and 1947 (see Appendices 2, 3, and 4). However, documents regarding plans for elections to be held pursuant to the Indian Reorganization Act suggest that there were at least 20 Indians residing on the Lower Lake Rancheria (see Appendix 5). The Superintendent of the Sacramento Indian Agency considered the land as uninhabitable, describing in one memorandum that the Lower Lake Rancheria was "a rock pile without any water for domestic use" (see Appendix 6). This view of the land appears to be the basis for a failed attempt in 1935 to acquire a nearby parcel of land for the use of the Lower Lake, Cache Creek, and Sulphur Banks people (see Appendix 6). On October 9, 1947, the Acting Superintendent, California Indian Agency, granted an assignment of the entire Lower Lake Rancheria to Mr. and Mrs. Louis Johnson, and Mr. and Mrs. Harry Johnson (see Appendix 7). A memorandum from Mildred E. Van Every to Mr. Douglas Clark, dated April 11, 1950, indicates that the population of the Lower Lake Rancheria was comprised of seven persons, "full blood Indian, Pomo Tribe" (see Appendix 8). Also, a list of 36 names includes the following notation: "Stella Johnson says all these Indians intend to make their homes on Lower Lake Rancheria sometime. M.A.L., 2-28-52" (see Appendix 9).

On March 7, 1951, the Lake County Board of Supervisors sought information from the BIA regarding the possible acquisition of the Lower Lake Rancheria for an airport (see Appendix 10). On March 14, 1951, the BIA advised the Lake County Board of Supervisors that "(a)n act of Congress will be necessary to grant authority to convey any portion of (the Lower Lake Rancheria) or lease the land for a period exceeding five years," and suggested a procedure for the possible acquisition (see Appendix 11). Additional correspondence on the subject followed (see Appendix 11).

At this stage of the transaction is the first mention of termination. An attorney from the Sacramento Indian Agency, by memorandum dated January 5, 1953, states, "I explained the reason for the delay (apparently in arranging a meeting) was for the purpose of determining whether this transaction would have any effect on our overall program" (see Appendix 12).

Eventually a meeting was convened where the BIA and County officials approached the Johnsons and informed them of the County of Lake's desire to purchase the Rancheria for use as an airport. A memorandum to the files by Douglas Clark, dated May 5, 1953, indicates that the Indians were consulted as to whether they consented to the sale of the entire Rancheria to the County of Lake, which would in turn gift deed to Harry Johnson a 41-acre parcel (see Appendix 13). A resolution by the Johnsons expressed their consent to the plan (see Appendix 14). However, there is no indication within Mr. Clark's memorandum of whether the issue of termination was discussed or consented to. Further, the resolution by the Johnsons does not address the issue of termination. Additional correspondence regarding the terms of the exchange followed (see Appendix 14).

A bill, H.R. 6105, was introduced on July 6, 1953 (see Appendix 15). The proposed legislation would authorize the Secretary of the Interior to convey the Lower Lake Rancheria to the County of Lake. In a letter to the Chairman of the House Committee on Interior and Insular Affairs, dated July 28, 1954, the Assistant Secretary of the Interior reported favorably on H.R. 6105 (see Appendix 16). In that letter, the Assistant Secretary states that:

"(t)he proposed sale of land in excess of the needs of the Indian occupants and the vesting of title to the 41-acre tract in Mr. Johnson, the present Indian assignee, is in line with the **proposed plan** for termination of Federal supervision over the property and activities of the Indians of the State of California, as embodied in H.R. 7322, now pending in the Congress."
(emphasis added)

However, soon after the introduction of this bill, the County of Lake learned that the proposed gift deed to Mr. Johnson was prohibited under the California Constitution (see Appendix 17). Since the County of Lake agreed to give fee title to Harry Johnson as part of the agreement with the Secretary of the Interior, but such a gift was prohibited under state law, the bill as drafted would be ineffective. Thus, it was now necessary to recommend a substitute bill, authorizing the Secretary of the Interior to directly convey the 41-acre tract to Harry Johnson in fee.

The substitute bill containing the amended language was introduced as H.R. 585 in early 1955. The report by the House Committee on Interior and Insular Affairs contained a letter dated June 30, 1955, by the Assistant Secretary of the Interior (see Appendix 18) stating in part that:

"(t)he proposed sale of land in excess of the needs of the Indian occupant and the vesting of title to the 41-acre tract in Mr. Johnson, the present Indian assignee, is in line with the **present policy** of termination of Federal supervision over the property and activities of the Indians of the State of California." (emphasis added)

The Assistant Secretary also suggested an amendment to the bill which would require that the proceeds of the sale be deposited in the United States Treasury to the credit of the Indians of California in their four percent judgment fund established under the Act of May 18, 1928 (45 Stat. 601). The legislation was approved, with the suggested amendment, on March 29, 1956 as P.L. 84-443 (70 Stat. 58) (see Appendix 19).

Soon it was discovered that P.L. 84-443 (Lower Lake Act) was technically deficient, in that an incorrect land description was given for the 41-acre parcel to be conveyed to the Johnsons (see Appendix 20). A bill to amend the Lower Lake Act, H.R. 11163, was introduced and was reported favorably (see Appendix 21). H.R. 11163 was approved on July 20, 1956, as P.L. 84-751 (70 Stat. 595) (see Appendix 22).

With the correct land description, the Secretary was now prepared complete the sale to the County of Lake (see Appendix 23). The Secretary was also prepared to issue a fee patent to the Johnsons. The patent was issued by the Secretary on November 9, 1956, and mailed to Harry Johnson (see Appendix 24). The funds received by the Secretary from the County of Lake were deposited in the manner required by the Lower Lake Act (see Appendix 25). Perhaps indicative of a possible misunderstanding about the terms of the transaction, Harry Johnson later inquired about monies yet to be paid to him from the sale of land to the County of Lake (see Appendix 26).

Limited research was conducted at the Recorder's Office, County of Lake, on November 30, 1999, to ascertain the present status of the 41-acre parcel. For the 6-year period immediately following the issuance and recordation of Mr. Johnson's fee patent, research indicates that Mr. Johnson sold at least some of the 41-acre parcel (see Appendix 27).

Tribal Government Status of the Lower Lake Rancheria:

Records of the BIA demonstrate that the Lower Lake Rancheria is presently considered terminated (see Appendix 28).

Despite this categorization of the Lower Lake Rancheria as presently considered terminated, Indian persons lineally descended from those having at one time a connection to the Lower Lake Rancheria have continued to assert their identity as a tribe. The group successfully obtained funding from the Administration for Native Americans, U.S. Department of Health and Human Services, to conduct research into their present status, to develop a tribal constitution and other primary laws, and to prepare a roll of tribal members. The group adopted a tribal constitution for tribal purposes on March 11, 1995, drafted enrollment and election ordinances, and an enrollment manual (see Appendices 29 and 30).

Representatives of the group provided copies of the roll of tribal members and other documents supporting the preparation of the roll to Mr. Fleming for his review. Although Mr. Fleming contacted representatives of the group earlier this year and made general comments regarding the documents, as of this date Mr. Fleming has not responded directly in writing.

Analysis:

The purpose of P.L. 84-443 (Lower Lake Act), as ascertained by a plain reading of the text, was twofold. First, the Lower Lake Act authorized the Secretary of the Interior (Secretary) "to sell to the County of Lake, California, for the purpose of establishing an airport" approximately 99 acres comprising a majority portion of the Lower Lake Rancheria. Second, the Lower Lake Act "authorized and directed" the Secretary "to issue a patent in fee or an unrestricted deed of conveyance to Harry Johnson" for the balance of the Lower Lake Rancheria, or approximately 41 acres. The Lower Lake Act contains no words either expressly terminating, or expressing the intent to terminate, the legal status of either the Johnsons or the Tribe. Certainly, these fee conveyances of the lands comprising the Lower Lake Rancheria relieved the Secretary of the Interior of any further responsibility for the land. However, the Lower Lake Act simply did not terminate the legal status of either the Johnsons or the Tribe.

Compare the language of the Lower Lake Act with that of §10(b) of the Rancheria Act (P.L. 85-671), as amended:

"After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families who are not members of any other tribe or band of Indians, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians..." (Language added by P.L. 88-419, 78 Stat. 390, at 391, is underscored).

The language of the Rancheria Act expressly terminates the legal status of each Indian who receives any part of the assets of a rancheria. No such language appears in the text of the Lower Lake Act.

The only indication that Congress may have viewed the Lower Lake Act as a termination act may be found in two letters by the Assistant Secretary of the Interior (Assistant Secretary) (see Appendices 14 and 17). These letters were incorporated into the reports of the Committee on Interior and Insular Affairs regarding H.R. 6105 and H.R. 585, the latter bill becoming the Lower Lake Act. These letters state that the sale and conveyance of the Lower Lake Rancheria are "in line with" the "proposed plan" or "present policy" of termination. However, such phrases do not clearly evince an express intent to terminate. Rather, such phrases indicate congressional recognition that no other law in effect at that time had been passed.

Although there was a concerted effort in Congress to pass such a law, at the time Lower Lake Act was passed, the bills which would eventually become the Rancheria Act were still being considered and amended by Congress. Thus, Congress was aware of the "present policy" but had not as that time yet exercised the power of termination. If Congress desired to terminate the Tribe, then it should be expressly stated so within the text of the Lower Lake Act. The reference by the Assistant Secretary to the "proposed plan" or "present policy" of termination cannot be read as decreeing whatever is necessary to achieve the termination of the Lower Lake Rancheria. Rather, the Lower Lake Act can only sustain its specific working provisions, as those provisions are in fact what Congress decreed in the Lower Lake Act.

The records of the BIA suggest that the Johnsons were never advised that their acceptance of a fee patent would be the basis of future refusals by the United States to provide services and benefits to them or other tribal members. It does not appear that the Johnsons consented to the loss of their legal status as Indians as a consequence of their acceptance of the title to the 41-acre parcel. If their consent to the sale and conveyance of the Lower Lake Rancheria were obtained without such disclosure, and this were the basis for considering the tribe as terminated, it would be unconscionable for the BIA to continue to consider the Tribe as terminated.

Conclusion:

As a result of the foregoing discussion and analysis, the Agency believes that the effect of the Lower Lake Act was not to terminate the Lower Lake Rancheria. Rather, the Lower Lake Act simply authorized two conveyances of titles to the land comprising the Lower Lake Rancheria. Unlike the Rancheria Act, the Lower Lake Act contains no express language to cause the loss of an Indian's legal status as an Indian as a result of his/her acceptance of any of the assets of the Lower Lake Rancheria. Further, the Indian people of the Lower Lake Rancheria appear not to have been informed that their consent to the sale would result in the loss of legal status or be equated with the termination of their Tribe. Therefore, we recommend that the Bureau of Indian Affairs administratively reaffirm that the Lower Lake Rancheria is a federally recognized tribe, contingent upon Mr. Fleming's favorable recommendation concerning enrollment and genealogical information submitted by the elected officials of the Lower Lake Rancheria.

As for the specifics of the recommended administrative reaffirmation, we also recommend that reference be made within any document developed to effect administrative reaffirmation to the Constitution of the Lower Lake Rancheria being the initial governing document of the Lower Lake Rancheria. We also recommend that all other laws enacted by the governing body established by the Constitution prior to the effective date of an administrative reaffirmation remain in effect unless superceded by subsequent Tribal law or otherwise inconsistent with Federal law.

Please contact Mr. Raymond Fry, Tribal Operations Officer, at (916) 566-7124 should you require additional information with regard to this matter.

Sgd. Dale Risling, Sr.

Attachments

cc: Director, Office of American Indian Trust