



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

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M-37055

Memorandum

To: Secretary
Assistant Secretary – Indian Affairs

From: Solicitor

Subject: Withdrawal of Solicitor’s Opinion M-37029, “The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act”

On March 12, 2014, the Solicitor issued M-37029 (“Sol. Op. M-37029”) that interpreted certain phrases found in the first definition of “Indian” (“Category 1”) at Section 19 (“Section 19”) of the Indian Reorganization Act of 1934 (“IRA”).¹ Sol. Op. M-37029 was published following the 2009 opinion of the United States Supreme Court (“Supreme Court”) in *Carcieri v. Salazar*,² which concluded that the phrase “now under federal jurisdiction” requires tribal applicants for trust-land acquisitions to have been “under federal jurisdiction” in 1934. The Supreme Court did not, however, construe the meaning of the phrases “recognized Indian tribe” or “under federal jurisdiction.”

In 2010, the Department of the Interior (“Department”) interpreted these phrases and other aspects of Section 19 in a record of decision for a fee-to-trust application submitted by the Cowlitz Indian Tribe (“Cowlitz ROD”).³ The Cowlitz ROD concluded that the phrase “under federal jurisdiction” was ambiguous, and interpreted it to mean “an action or series of actions (...) that are sufficient to establish, or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government.”⁴ The Cowlitz ROD separately interpreted the phrase “recognized Indian tribe” and concluded it was not subject to the temporal limitation contained in “now under federal jurisdiction,” meaning that an applicant tribe is “recognized” for purposes of Category 1 so long as it is “federally recognized” at the time the IRA is applied.⁵

Sol. Op. M-37029 adopted the analysis and interpretive framework set forth in the Cowlitz ROD with little substantive change, including the Cowlitz ROD’s two-part procedure for determining whether a tribe was “under federal jurisdiction” in 1934.

¹ Act of June 18, 1934, c. 576, 48 Stat. 984, codified at 25 U.S.C. § 5101, *et seq.*

² *Carcieri v. Salazar*, 555 U.S. 379 (2009).

³ U.S. Department of the Interior, Assistant Secretary – Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation Proclamation for the 151.87 acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 77-106 (Dec. 17, 2010).


⁴ Cowlitz ROD at 94.

⁵ Cowlitz ROD at 87-89.

Since the issuance of Sol. Op. M-37029 in 2014, attorneys in the Office of the Solicitor (“Solicitor’s Office”) have consulted with the Bureau of Indian Affairs (“BIA”) to determine eligibility for trust-land acquisitions under Category 1 using Sol. Op. M-37029’s two-part procedure. In each case, the Department has assessed the evidence submitted by an applicant tribe to determine whether such evidence sufficiently demonstrated that the tribe was “under federal jurisdiction” in 1934.⁶ Considerable uncertainty remains, however, over what evidence may be submitted to demonstrate federal jurisdictional status in and before 1934. Because of this, many applicant tribes spend considerable time and resources researching and collecting any and all evidence that might be relevant to this inquiry, in some cases prompting submissions totaling thousands of pages.

To remove such uncertainties and to assist tribes in assessing eligibility, in 2018, the Solicitor’s Office began a review of Sol. Op. M-37029’s two-part procedure for determining eligibility under Category 1, and the interpretation on which it relied. This review has led me to conclude that Sol. Op. M-37029’s interpretation of Category 1 is not consistent with the ordinary meaning, statutory context, legislative history, or contemporary administrative understanding of the phrase “recognized Indian tribe now under federal jurisdiction.” Therefore, I hereby withdraw Sol. Op. M-37029.

Concurrent with this Opinion, I am issuing procedures under separate cover to guide Solicitor’s Office attorneys in determining the eligibility of applicant tribes under Category 1. This guidance derives from an interpretation of Category 1 that better reflects Congress’ and the Department’s understanding in 1934 of the phrase “recognized Indian tribe now under federal jurisdiction.”


Daniel H. Jorjani

⁶ *Checklist for Solicitor’s Office Review of Fee-to-Trust Applications*, Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs at ¶ 9 (Jan 5, 2017).