

The Ghost Indians of California

Ghost Indians defined:

- 1 - All Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State.
- 2 - Who are currently eligible to receive Indian health care pursuant to 25USC1679
- 3 - Who are individually acknowledged by the Bureau of Indian Affairs pursuant to 25USC657 "California Indian defined" ..
- 4 - Who can make and sell arts and crafts as "Indian Made" pursuant to the Native American arts and crafts act of 1990.
- 5 - Who can possess non game-bird feathers.
- 6 - Who can repatriate native american remains not curated in Federal facilities.
- 7 - Who's Tribal councils are not now acknowledged because of the Bureau of Indian Affairs practice of detribalization.
- 8 - And the US Congress never terminated them,

Federal Indian treaties in the middle to late 19th century had the declared purpose of "protecting" the surviving tribal groups.

California Indians were removed from their traditional homelands between 1851 and 1863 and moved to eighteen large areas, comprising over 8 million acres, promised as reservations in treaties that tribal representatives and federal agents had signed.

The California Senate refused to ratify the 18 treaties, however; and non-Indians soon laid claim both to the traditional Indian homelands and to the lands promised the Indians in the unratified treaties. This was the last federal interference in Indian affairs until the 1870s, leaving California Indians at the mercy of the provisions of the 1850 California Indian law. Courts then failed to protect the Indians who sought to remain on or return to their historic lands. Thus the tribes were left homeless, dispersed, and starving.

Chapter CCXXXI-An Act amendatory of an Act entitled
"An Act for the Government and Protection of Indians,"
Approved April 18, 1860.

The people of the State of California, represented in Senate and
Assembly, do enact as follows:

SECTION 1. Section third of said act, is hereby amended so as
to read as follows:

Sec. 3. County and District Judges in the respective counties of
this state, shall, by virtue of this act, have full power and
authority, at the instance and request of any person having or
hereafter obtaining an Indian child or children, male or female,
under the age of fifteen years, from the parents or person or
persons having the care or charge of such child or children, with
the consent of such parents or person or persons having the care
or charge of any such child or children, or at the instance and
request of any person desirous of obtaining any Indian or
Indians, whether children or grown persons, that may be held as
prisoners of war, or at the instance and request of any person
desirous of obtaining any vagrant Indian or Indians, as have no
settled habitation or means of livelihood, and have not placed
themselves under the protection of any white person, to bind and
put out such Indians as apprentices, to trades, husbandry, or
other employments, as to them shall appear proper, and for this
purpose shall execute duplicate articles of indenture of
apprenticeship on behalf of such Indians, which indentures shall
also be executed by the person to whom such Indian or Indians
are to be indentured; one copy of which shall be filed by the
County Judge, in the Recorder's office of the county, and one
copy retained by the person to whom such Indian or Indians
may be indentured; such indentures shall authorize such person
to have the care, custody, control, and earnings, of such Indian
or Indians, as shall require such person to clothe and suitably

provide the necessaries of life for such Indian or Indians, for and during the term for which such Indian or Indians shall be apprenticed, and shall contain the sex, name, and probable age, of such Indian or Indians; such indentures may be for the following terms of years: Such children as are under fourteen years of age, if males, until they attain the age of twenty-five years; if females, until they attain the age of twenty-one years; such as are over fourteen and under twenty years of age, if males, until they attain the age of thirty years; if females, until they attain the age of twenty-five years; and such Indians as may over the age of twenty years, then next following the date of such indentures, for and during the term of ten years, at the discretion of such Judge; such Indians as may be indentured under provision of this section, shall be deemed within such provisions of this act, as are applicable to minor Indians.
Amendments to Act of April 1850 (approved 1860)

One day [1859] many white braves - volunteers they were called - came to our valley "Concow valley" and gathered all our people together, and for many days and nights we traveled over the mountains until we came to a place called Mendocino, where the whites had made a corral for us which was called a Reservation. The time became very hard, for often we were very hungry, and did not know where to get enough to eat, and the Concows began to die very fast....

One day [1860] our people were very hungry, we did not have ground enough to raise the corn and potatoes that we needed. We had to go to some other place where there was more room. By and by we were told that we could go to Round Valley and live on that Reservation. But when we came to Round Valley we were as badly off as before; there was even less to eat.

In the fall of 1862 , a large number of Indians were on the

Round Valley Reservation . Because of over crowding, lack of food, and unsanitary conditions, disease spread rapidly. Winter was approaching, and the swollen streams surrounding the valley would isolate it from the rest of the world until spring. The ConCow Indians realized what their fate would be. So one morning in September , a large number, from three to five hundred , packed their meager valuables and said good bye to Supervisor Short, and started for their old home in the Sacramento Valley. They were stopped at the Sacramento River near Chico. Headman Tome - ya - nem told the soldiers that his people were starving and asked for work to earn food for the winter. The ConCow were granted permission to camp about five miles from Chico for the winter. During the next eleven months, the Chee-es-see ConCow from Yankee Hill were rounded up and corralled with the group from ConCow Valley. In 1863 the remaining ConCow were ordered to be at the Bidwell Rancheria on August 28,1863 to be taken to the Round Valley Reservation at Covelo in Mendicino County. If any Indians were found after that date, they would be shot on sight. And they were. Agents collected 461 Indians and placed them under Major Hooker's control in Chico, as prisoners of war.

Captain Augustus W. Starr, Co F., 2nd Cavalry, California Volunteers, in command of twenty-three mounted Calvary, was assigned as escort to assist sub agent Eddy in the removal of the Indians. Fourteen wagons were commandeered from valley ranchers to carry supplies and many of the Indians as far as Thomas Creek. This ill-starred trip has gone down in Indian history as an inhumane drive to a strange and inhospitable valley over a long, hot, dry trail through the Sacramento Valley and through the steep , rocky rout of the Coast Range. Many of the Indians already were sick from being rounded up, marched, and corralled.

461 Indians started the treck, 277 finished it, about 150 sick Indians were scattered along the trail for 50 miles... dying at the

rate of 2 or 3 per day. They had nothing to eat... and the wild hogs were eating them up either before or after they were dead."

1862 The Homestead Act was a piece of legislation passed by the United States Congress and signed into law by President Abraham Lincoln. Under the Homestead Act, the head of a family could lay claim to up to 160 acres (65 hectares). He didn't need to be a citizen; the only requirement was the ability to pay a small registration fee and to occupy the land for the required amount of time. For those in a hurry, the land could be purchased for \$1.25 (US) an acre after six months. Many Indians chose this route instead of the Indian allotment route.

In our case, the Gramps family homesteaded and mineral patented 160 acres in Pulga, Butte Co CA. They built a two story nine bedroom home in traditional tribal territory. Their property was taken from them through eminent domain. The State of California needed their land to build Hwy 70 up the Feather River Canyon. The Clark families homesteaded other nearby Tribal lands and were able to keep them until their passing.

1887 The Indian Homestead Act, or more properly known as the Dawes Act, called for phasing out the governments of Indian Nations and authorized allotment as soon as the rolls were ready.

1887 The Dawes or General Allotment Act authorizing the President to order allotment of reservations, "giving" 160 acres to heads of families and smaller parcels to others. Allotments were to remain in trust for twenty-five years. Citizenship came with allotment. The government was also authorized to purchase "surplus" reservation land. Allotment process would lead to the loss of almost half of Indian lands by 1900 – from 155 million acres in 1891 to somewhat less than 78 million in 1900, including about 5.4 million acres in allotments.

In our case, Walter Scott Clark and his wife Flora were allotted as ‘Heads of family’ on the Round Valley Reservation. They never had children. Walter died and Flora sold the allotments and moved back to Chico and lived with her nephew until she died at 107 years old. She is buried in the Chico Indian cemetery. Walter's five younger brothers and one younger sister did not accept the smaller allotments, instead they came home to Butte County and homesteaded their own property of much more acreage.

Because Flora sold the Families allotments we are not members of the Round Valley Reservation even though Walter's GrandFather was the Chief of the Concows who lived the last of his life and died on the Round Valley Reservation and we are not BIA acknowledged

1906 The Burke Act changed allotment under the Dawes Act in two important ways. The twenty-five-year trust period was abolished and trust status could be ended or extended at the will of the government. And citizenship would be granted when trust status ended, not when the allotment was made. The government set up competency commissions to determine whether trust status should be continued in individual cases.

1924 Congress extended citizenship to Indians on the basis of birth in the United States. Many Indians were already citizens under various treaties and acts, and western state legislators found ways to keep Indians from voting.

1928 The Meriam Report, drawn up by experts at what is now the Brookings Institution to summarize the condition of Indian people for the government, the Meriam Report demonstrated that wretched conditions still prevailed on reservations and in Indian schools and thus implied that the hopeful efforts of generations of reformers had been unsuccessful.

1934 The Indian Reorganization Act, or Wheeler-Howard Act, authorized tribal governments and corporations, loans for economic development, return of lands to tribes, among other things. The act was the centerpiece of John Collier's Indian New Deal.

In 1953 Congress passed House Concurrent Resolution 108, which declared that the policy of the government would be termination of its government-to-government relationship with tribes. HCR 108 did not terminate tribes, but only set the policy. Several specific termination acts would be passed the next year.

1953 Congress passed Public Law 280 to give several states, including California, civil and criminal jurisdiction over reservations.

House Concurrent Resolution 108 of 1953 was a formal statement by the United States Congress announcing the official federal policy of termination. The resolution called for the immediate termination of the Flathead, Klamath, Menominee, Potawatomi, and Turtle Mountain Chippewa, as well as all tribes in the states of California, New York, Florida, and Texas. Termination of a tribe meant the immediate withdrawal of all federal aid, services, and protection, as well as the end of reservations.

The true purpose of the termination policy was to relieve the United States of the responsibility to protect tribal rights and property.

To accomplish this goal, the government sought to subject tribal members and property to the full scope of state laws by effectively eliminating the sovereign status of Indian tribes, and thus, implicitly, the federal trust responsibility.

Following this policy, the Termination Act abolished the Tribe's federal rights and services, closed the tribal roll, and transferred all of the Tribe's property to a private ownership.

The Tribe, itself, was not technically abolished -- such a formality was not necessary, since the Act effectively took from the Tribe the power to function as a sovereign entity.

In 1943 the United States Senate commissioned a survey of Indian conditions. It indicated that living conditions on the reservations were extremely poor. The Bureau of Indian Affairs (BIA) and its bureaucracy were found to be at fault for the troubling problems due to extreme mismanagement. Congress concluded that some tribes no longer needed federal protection and would be better off with more independence, rather than having them depend on and be poorly supervised by the BIA.

Public Law 280, passed in 1953, gave State governments the power to assume jurisdiction over Indian reservations, which had previously been excluded from state jurisdiction. It immediately granted the state criminal and civil jurisdiction over Indian populations in California, Nebraska, Minnesota, Oregon, and Wisconsin.

The main effect of Public Law 280 was to disrupt the special relationship between the federal government and the Indian tribes. Previously the tribes had been regulated directly by the federal government.

In 1968 in *Menominee Tribe v. United States*.

The US Supreme Court found that termination of a tribe did not abrogate treaty rights unless there was specific legislative intent to do so.

Public Law 280 explicitly states that "Nothing in this section... shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement or statute with respect to hunting, trapping, or fishing

or the control, licensing, or regulation thereof." These proceedings show that while the abrogation of federal treaties is legal (under *Lone Wolf v. Hitchcock*), Congressional intent to abrogate these treaties cannot be inferred, it must be explicit. Unless specifically abrogated by Congress, treaty rights remain in effect, whether a tribe is terminated or not.

In 1958, Congress passed Public Law 85-671

August 18, 1958 | [H. R. 2824] 72 Stat. 619

An act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Finoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

All Indians who received a portion of the assets were ineligible to receive any more federal services rendered to them based on their status as Indians.

The Indian Self-Determination and Education Assistance Act of 1975 allows tribal governments and consortiums to take over provision of services from the BIA and the Indian Health Service.

Congress passed the Indian Religious Freedom Act in 1978 requiring the government to protect the religious freedom of federally recognized Indian tribes. Not California Indians.

Now, After all this, The Bureau of Indian affairs basically want to know how we survived all the attempts to exterminate us. If we don't satisfy their criteria, they will, again, exercise their powers to finish us off. But we just won't die.

25CFR 83.3 procedures for establishing that an Indian Tribe exists.

Definitions

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(e) Further, groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.

The BIA claims that the Ghost Indians of California are not excluded from applying for BIA recognition even though they already receive the above listed goods and services .

Because Ghost Indians are not BIA recognized. They are refused the right to be represent by their tribes, they are refused the right to repatriate from federal collections, or participate in revenue sharing under the Indian gaming pacts.

The Secretary of the Interior shall have until June 30, 1955, to approve and promulgate the revised roll of the Indians of California provided for in this section.

The Secretary of the Interior shall prepare not less than five

hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933,

Undercounting the Service Population in California...

When the Bureau of Indian Affairs and other federal agencies allocate program dollars among different tribes and geographic areas, they often base these allocations on numbers of individuals eligible to be served by these programs. Particularly where programs are designed to serve individual needs such as welfare, education, housing, health care.

Studies of funding equity for California tribes typically compare federal dollars allocated per person for different area offices of the Bureau of Indian Affairs or for comparable divisions of other federal agencies. These comparisons rarely question the population figures put forward for each area office or other division by the relevant agency. Thus, for example, the 1976 study by the California Department of Housing and Community Development, the 1977 Report to the Commissioner of the BIA Regarding Funding of Bureau Programs in the Sacramento area, and the 1989 BIA Resource Allocation Effectiveness Study all take as a given the Bureau's own service population figures in determining whether California Indians were unfairly denied federal program support.

If the Bureau's population figures systematically undercount California Indians it is critical to determine whether the eligibility criteria themselves are biased against California Indians, or these criteria are applied in a way that leaves California Indians undercounted. Even the limitation of benefits to members of recognized tribes is suspect in the California context, where individuals who can prove that the federal government views them as Indians nonetheless have been denied recognition.

In the earliest years of federal Indian policy in California, there

were no treaties and no reservations. Every member of an indigenous California group was treated as a federal responsibility, regardless of place of residence or formal federal recognition. During the first seventy years after California statehood, as small areas of land were set aside for tribes throughout the state, Congress periodically appropriated funds for the benefit of California Indians, again without specifying eligibility criteria related to residence or recognition. In 1921, Congress regularized appropriations for Indian benefits nationwide by adopting the Snyder Act, which gave general authorization for such expenditures. The Snyder Act likewise had no geographic restrictions on eligibility, stating that it was for "the benefit, care, and assistance of the Indians throughout the United States." Since most Indian programs funded through the Bureau rest on the authority of the Snyder Act, debate has ensued over whether the Bureau may introduce geographic restrictions, such as requirements that beneficiaries live on reservations or "near" reservations. There have also been challenges, focused largely in California, on the limitation of benefits to members of recognized tribes. Geographic Restrictions. Bureau practices have not always confined benefits authorized by the Snyder Act to reservation Indians, Bureau pronouncements have sometimes articulated an "on reservation" requirement. For example, in 1970, Assistant Secretary of the Interior Harrison Loesch wrote to the Commissioner of the Bureau of Indian Affairs, "It is a long-standing general policy of the Bureau of Indian Affairs and the Congress that the Bureau's special Federal services are to be provided only to the reservation Indians." Where such limitations found their way into BIA manuals, tribal members who were living near reservations and functioning as part of tribal communities brought lawsuits challenging denials of benefits. In one of these cases, *Morton v. Ruiz*, the Supreme Court declared that the federal trust responsibility to Indian tribes required clear articulation and justification for any policy that excluded groups of Indians from benefits under the Snyder Act. The upshot of *Morton v. Ruiz*

was that the Bureau formalized and expanded its eligibility and priority criteria to include Indians living "near" reservations as well as those living within reservation boundaries. In addition, the Bureau established procedures for officially designating particular areas as "near" reservations, including application of specified criteria, and requirements of consultation with the relevant tribe and publication in the Federal Register.

Consequently, when the Bureau does its biannual determinations of service population and labor force, it directs tribes to identify the "Total Resident Indian Population" by adding together the Indians "within the reservation" and those "adjacent to the reservation."

Oklahoma Indians and (more recently) Alaska Natives have received special treatment under these Bureau policies regarding geographic eligibility.

In each case, the special treatment responds to a distinctive history of legal actions affecting the existence of reservations in that state.

For example, the Bureau has taken account of the fact that Oklahoma reservations (but not tribes) were abolished near the turn of this century, by defining "reservations" to include "former reservations in Oklahoma."

The Bureau has accommodated the fact that Congress in 1974 established a regime of regions and native villages in Alaska in lieu of reservations, by defining the term "reservations" to include "Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act."

As a consequence of such special treatment, there is a close approximation between the census statistics for Indian population in those states and the Bureau's figures for service population.

In California, the BIA service population statistics and the census figures for all Indians in the state diverge widely.

For 1990, the census shows 236,078 Indians living in California.

For 1989 the Bureau's service population is only 28,815. .

The census counted 91,018 Indians in California in 1970.

The Bureau's 1971 service population was only 6,100.

It is clear that the Department of the Interior's recognized California Tribes are not counted, as no mailers are sent to the DOI recognized tribes.

The Bureau's counting methods are seriously biased toward members of Bureau of Indian Affairs recognized local tribes, leading to understatement of the total number of Indians.

The standard protocol is for the Bureau to circulate forms to individual BIA recognized tribes, asking tribal leaders to identify the resident Indian population on and adjacent to the reservation.

Tribal leaders tend to only identify their tribal members, not Department of the Interior recognized nonmember Indians.

While these nonmember Indians are eligible for federal services, they are not counted for service population purposes.

If resources were provided and tribes were given incentives to count all Indians, the numbers would rise even higher.

In fact, the census allows us to determine the number of Indians who live in rural parts of counties in which reservations are located, an approximation of the "on or near" reservation category.

For 1990, that figure is 70,860, or approximately two and one half times the 28,815 service population for 1989. Thus, even accepting the Bureau's definition of service population areas, there is a serious undercount in California.

This undercount means, in turn, that The Department of the Interior recognized California Indians are denied their appropriate share of federal benefits, at least when such benefits are allocated on the basis of population numbers. Even a figure

that is two and one-half times the service population count in California would not necessarily provide the most appropriate tally of Indians for purposes of assessing funding equity.

There is good reason to question whether the "on or near" limitation ought to be applied at all to members of the Department of the Interior's recognized indigenous California groups.

If that limitation were relaxed, the number of Indians moves closer to the 236,078 figure for statewide Indians in the census or, if one excluded the 54,440 Indians in Los Angeles, San Francisco, and Alameda (Oakland) counties, 181,638. Excluding these large cities makes some sense if the focus is on indigenous California Indian groups, because masses of Indians from tribes outside of California were relocated to the Los Angeles and San Francisco Bay areas during the 1950s.

It is also true, however, that members of indigenous California groups live in these cities as well. Should the "on or near" limitation be applied to California Indians?

Such a criterion was not in force in the early years of federal responsibility for California Indians.

In 1970, a Bureau official filed a sworn affidavit in the course of litigation, in which he stated, "There has been no instance where a California Indian, otherwise eligible, was denied available federal boarding school or scholarship assistance by the Sacramento Area Office for failure to meet the 'on or near' criteria in the regulations."

In the post-Snyder Act period, however, the Bureau has in fact invoked the "on or near" limitation to restrict service population counts and eligibility for California Indians. As a consequence, many federal officials and Indian advocates have argued that special treatment is warranted for California Indians, just as it has been instituted for Oklahoma Indians and Alaska Natives. This special treatment could be provided either by an expansive interpretation of the terms "on or near" (for example, to include all counties in the state where trust lands are located, or even to

include the entire state), or by dropping the requirement of "on or near" altogether. The case for such special treatment rests on the distinctive and tragic history of loss of California Indian lands.

Goods and Services. Equal rights are not special rights.

Goods and services doesn't just refer to health care, educational opportunities or housing. It also refers to legal rights

Specifically, equal protection of the law does not apply to the Department of the Interior's recognized Ghost Indians of California as it does for other Bureau of Indian Affairs recognized tribes.

" Remember, NAGPRA changed the rules after 84 years of doing business without consideration of Native American cultural property rights and it will take more than ten years for equal protection of the law to become part of the fabric of our culture.
"

Sherry Hutt. 1999 address to Congress.

PUBLIC LAW 101-601--NOV. 16, 1990

Only addresses the rights of Bureau of Indian Affairs recognized tribes, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In NAGPRA, the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services

provided by the United States to Indians because of their status as Indians.

The Bureau of Indian Affairs has interpreted the definition of "Indian tribe" as applying to approximately 770 Indian tribes and Alaska Native villages that are recognized by the Bureau of Indian Affairs. Excluding the Department of the Interior's recognized California Tribes altogether.

And that is why they violate the provisions of 25USC657 & The Snyder Act of 1921. They failed to include these DOI recognized Tribes and Indians who are eligible for the goods and services provided for in the Snyder Act of 1921.

The Snyder Act provides:

"The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate" 25 U.S.C. 13.

There are three prominent issues pertaining to the National Native American Graves Protection and Repatriation Act that violate the equal protection and due rights clauses.

Issue 1. The effect of 25USC651 on NAGPRA

Issue 2. The rights of non terminated unacknowledged tribes.

Issue 3. The application of State laws regarding NAGPRA.

A DOI recognized tribe is eligible for the special programs and services provided by the United States to Indians because of their status as Indians just the same as a BIA recognized tribe is.

The creators of NAGPRA clearly rejected the Bureau of Indian Affairs previously listed, narrow definition of Indian tribe that the Department of the Interior adopted. The Secretary of the Department of the Interior is responsible for creating a new

definition of Indian tribe that reflects the suggestions of the commenters that the NAGPRA review committee concurred with.

The following is cut directly from National NAGPRA and it clearly spells out that recognition by the Bureau of Indian Affairs is not required for repatriation.

One commenter recommended clarifying the definition of Indian tribe in Sec. 10.2 (a)(9) (renumbered Sec. 10.2 (b)(2)) to ensure timely notification. Seventeen commenters recommended expanding the definition to include a broader spectrum of Indian groups than those recognized by the Bureau of Indian Affairs (BIA). Several commenters identified specific groups they felt should have standing, including: various bands or tribes in California, Washington, and Ohio; Native American organizations such as the American Indian Movement; Native American groups that "would be eligible for recognition by the BIA if they so chose to be"; and "bands recognized by other Federal agencies."

Section 12 of the Act makes it clear that Congress based the Act upon the unique relationship between the United States government and Indian tribes. That section goes on to state that the Act should not be construed to establish a precedent with respect to any other individual or organization. The statutory definition of Indian tribe, which specifies that such tribes must be "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians," precludes extending applicability of the Act to Indian tribes that have been terminated, that are current applicants for recognition, or have only State or local jurisdiction legal status. As was explained in the preamble of the proposed regulations, the definition of Indian tribe used in the Act was drawn explicitly from an earlier version of the bill (H.R. 5237, 101th Congress, 2nd Sess. sec. 2 (7), (July 10, 1990)) using a

specific statutory reference. The final language of the Act is verbatim from the American Indian Self Determination and Education Act (25 U.S.C. 450b). The earlier statute has been carried out since 1976 by the BIA to apply to a specific list of eligible Indian tribes which has been published in the Federal Register.

Four commenters found this interpretation unduly narrow and recommended interpreting the statutory definition to apply to Indian tribes that are recognized as eligible for benefits for the special programs and services provided by "any" agency of the United States to Indians because of their status as Indians. The Review Committee concurred with this recommendation. Based on the above recommendations, the definition of Indian tribe included in the regulations was amended by deleting all text describing the process for obtaining recognition from the BIA. In place of this text, the final regulations include a statement identifying the Secretary as responsible for creating and distributing a list of Indian tribes for the purpose of carrying out the Act. This list is currently available from the Departmental Consulting Archeologist and will be updated periodically.

A Non BIA recognized tribe does have a right to repatriate from a NAGPRA collection if their are no culturally affiliated BIA recognized tribes who might object if they so choose too.

CDIB - Certified degree of indian blood

The Bureau of Indian Affairs published in the Federal Register a proposed rule that establishes the documentation requirements and standards for filing, processing, and issuing a Certificate of Degree of Indian Blood

The proposed rule sets forth the policies and standards that will allow the Bureau to issue, amend, or invalidate CDIBs.

The Bureau intends to use this rule as a means of limiting access to federal Indian programs and services to only those Indians

who possess the blood of federally recognized tribes where some degree of Indian blood is either a stated or implied requirement of program eligibility.

The Bureau appears to be using the proposed rule as a means to unilaterally "amend" both federal statutory and regulatory provisions without congressional oversight.

In the past, the Bureau's calculation of Indian blood for purposes of Snyder Act programs, the IRA, the Allotment Act and other purposes, was based on blood derived from both federally recognized and non-federally recognized tribes.

The proposed rule, which authorizes the Bureau to "issue, amend, or invalidate" CDIBs, would allow the Bureau to recalculate Indian blood degree based solely on the blood of federally recognized tribes.

The Bureau's recalculation of the blood quantum of members of federally recognized tribes could raise questions about the eligibility of such persons for tribal membership if the recalculated blood quantum falls below the minimum tribal blood quantum requirement.

A number of California Indian tribes rely on the Bureau's calculation of Indian blood degree in determining eligibility for tribal membership. In some cases, the Indian blood degree requirement for tribal membership.

The Bureau's Indian blood quantum calculation underlying such determinations of membership may well include Indian blood derived from both federally recognized and non-federally recognized tribes. The likelihood of this is higher in California than elsewhere because of the large number of non-federally recognized tribes (both terminated and unacknowledged tribes) in California.

The Bureau's calculation would not be binding on the tribe in determining tribal membership, but it could jeopardize the membership status of such individuals and their lineal descendants.

The Allotment Act, the Snyder Act, the Indian Reorganization Act, and other federal statutes and regulations spanning more than a century, as well as the Bureau's own policies and practices, confirm that the trust obligations of the United States to Indian people are not restricted to members of The Bureau of Indian Affairs recognized tribes. It also includes The Department of the Interior's Recognized California Tribes.

By restricting the CDIB to the blood of The Bureau of Indian Affairs recognized tribes only, the proposed rule will serve to perpetuate the Bureau's underfunding of Indian programs and services in California.

Because of the unique history of Federal-Indian relations in California, many California Indians are not members and do not possess the blood of those tribes that the Bureau lists as federally-recognized. This unique history includes the unratified treaties and dispossession of California tribes of their aboriginal homelands; the widespread use of public domain allotments as a "substitute" for tribal homelands; the acquisition of tribal trust lands ("rancherias") for "homeless California Indians"; the termination of the rancherias under the Rancheria Act; the subsequent restoration of the federally recognized status of many of the affected tribes and their members; and the use of a plaintiff class consisting of the "Indians of California" in the California Indian Claims cases.

For years the California tribes (both BIA recognized tribes and DOI recognized tribes) have contended that the Bureau significantly undercounts its service population in California because it excludes California Indians who are rightfully included within the scope of the Bureau's trust obligations, including California Indians who meet the broad definition of "California Indian" in 25 U.S.C. §1679, **which defines those Indians who are eligible for Indian health care benefits.** See also, *Malone v. Bureau of Indian Affairs*, 38 F.3d 433 (9th Cir. 1994).

By restricting the CDIB to the blood of federally recognized tribes, the Bureau is taking the position that it can ignore any Indian blood derived from a California tribe that is not federally recognized for purposes of determining the eligibility of individuals for federal Indian programs and services based upon their status as American Indians or Alaskan Natives.

The Advisory Council on California Indian Policy Act of 1992, Pub. L. 102-416 (October 4, 1992), as amended by P.L. 104-109 (February 12, 1996), established a statewide Indian Council consisting of representatives of California's federally recognized, terminated and unacknowledged tribes. Section 5(3) of the Act specifically directed the Council to conduct a comprehensive study of the social, economic, and political status of California Indians; the effectiveness of those policies and programs of the United States that affect California Indians; and the services and facilities being provided to California Indian Tribes, compared to those being provided to Indian tribes nationwide.

The Advisory Council submitted its reports to Congress in September 1997, including recommendations related to the status and eligibility of California Indians for federal Indian programs and services.

The Advisory Council recommended that the Bureau adopt the definition of "California Indian" used by the Indian Health Service (25 U.S.C. § 1679). That definition includes California Indians whose Indian blood quantum is derived exclusively from non-federally recognized California tribes and California Indians whose Indian blood quantum is derived from both federally recognized and non-federally recognized California tribes, but who are not members of a federally recognized tribe.

A final irony associated with this proposed rule is the fact that federally recognized rancherias in California are not based on association with a previously recognized Indian tribe. Rancherias

were created for homeless indians and not for homeless indian tribes. In short, this would exclude the rancherias from a CDIB certificate.

PUBLIC LAW 101-601--NOV. 16, 1990
NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT

Defines indian tribe:

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), **which is recognized as eligible for the special programs and services** provided by the United States to Indians because of their status as Indians.

TITLE 25--INDIANS

CHAPTER 18--INDIAN HEALTH CARE

SUBCHAPTER VI--MISCELLANEOUS

Sec. 1679. Eligibility of California Indians

(b) Eligible Indians

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

- (1) Any member of a federally recognized Indian tribe.
- (2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant--

(A) is living in California,
(B) is a member of the Indian community served by a
local
program of the Service, and
such
(C) is regarded as an Indian by the community in which
descendant lives.

(3) Any Indian who holds trust interests in public domain,
national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for
distribution of the assets of California rancherias and
reservations
under the Act of August 18, 1958 (72 Stat. 619), and any
descendant
of such an Indian.

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER XXV--INDIANS OF CALIFORNIA

Sec. 651. ``Indians of California" defined

For the purposes of this chapter the Indians of California shall
be defined to be all Indians who were residing in the State of
California on June 1, 1852, and their descendants now living in
said
State.

(May 18, 1928, ch. 624, Sec. 1, 45 Stat. 602.)

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[Laws in effect as of January 20, 2004]
[Document not affected by Public Laws enacted between
January 20, 2004 and December 23, 2004]
[CITE: 25USC657]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER XXV--INDIANS OF CALIFORNIA

Sec. 657. Revision of roll of Indians

The Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to revise the roll of the Indians of California, as defined in section 651 of this title, which was approved by him on May 16, 1933, in the following particulars:

(a) By adding to said roll the names of persons who filed applications for enrollment as Indians of California on or before May 18, 1932, and who, although determined to be descendants of the Indians residing in the State of California on June 1, 1852, were denied enrollment solely on the ground that they were not living in the State of California on May 18, 1928, and who were alive on May 24, 1950; (b) by adding

to said roll
the names of persons who are descendants of the Indians
residing in the
State of California on June 1, 1852, and who are the fathers,
mothers,
brothers, sisters, uncles, or aunts of persons whose names appear
on
said roll, and who were alive on May 24, 1950, irrespective of
whether
such fathers, mothers, brothers, sisters, uncles, or aunts were
living
in the State of California on May 18, 1928; (c) by adding to said
roll
the names of persons born since May 18, 1928, and living on
May 24,
1950, who are the children or other descendants of persons
whose names
appear on said roll, or of persons whose names are eligible for
addition
to said roll under clauses (a) or (b) of this section, or of persons
dying prior to May 24, 1950, whose names would have been
eligible for
addition to said roll under clauses (a) or (b) of this section if such
persons had been alive on May 24, 1950; and (d) by removing
from said
roll the names of persons who have died since May 18, 1928,
and prior to
May 24, 1950. Persons entitled to enrollment under clause (a) of
this
section **shall be enrolled by the Secretary of the Interior
without
further application.** Persons claiming to be entitled to
enrollment under
clauses (b) or (c) of this section shall, within one year after May
24,
1950, make an application in writing to the Secretary of the

Interior

for enrollment, unless they have previously filed such an application

under this section. For the purposes of clause (d) of this section, when

the Secretary of the Interior is satisfied that reasonable and diligent

efforts have been made to locate a person whose name is on said roll and

that such person cannot be located, he may presume that such person died prior to May 24, 1950, and his presumption shall be conclusive.

The Secretary of the Interior shall prepare not less than five hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933, giving the name, address, and age at time of enrollment of each such enrollee, together with such other factual information, if any, as the Secretary may deem advisable as tending to identify each enrollee, and shall distribute copies of this list to the various communities of California Indians.

The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to the revision of said roll. After the expiration of the period allowed by this section for filing applications, **the Secretary of the Interior shall have until June 30, 1955, to approve and promulgate the revised roll** of the Indians of California provided for in this section. Upon such approval and promulgation, the roll shall be closed and thereafter no additional names shall be added thereto.

(May 18, 1928, ch. 624, Sec. 7, 45 Stat. 603; Apr. 29, 1930, ch. 222, 46

Stat. 259; June 30, 1948, ch. 765, Sec. 1, 62 Stat. 1166; May 24, 1950,

ch. 196, Sec. 1, 64 Stat. 189; June 8, 1954, ch. 271, Sec. 1, 68 Stat. 240.)

Amendments

1954--Act June 8, 1954, inserted sentence providing for presumption of death, for purposes of cl. (d), after failure to locate, and extended to June 30, 1955, time for approving and promulgating revised roll.

1950--Act May 24, 1950, permitted revision of roll to include certain classes of Indians not previously eligible for inclusion.

1948--Act June 30, 1948, amended section generally to permit Secretary of the Interior to revise roll of Indians.

1930--Act Apr. 29, 1930, increased time within which an Indian could make application to be enrolled, and increased time within which Secretary of the Interior could alter and revise roll.

The California Ghost Tribes are receiving less than half the health care aid necessary to meet their needs -- and the level of funding hasn't changed since 2001 when Congress allowed the Indian Health Care Improvement Act to expire.

An effort to renew the law is under way. A bill reauthorizing the law unanimously has passed the first of three committees necessary to send it to the House floor. It's laying the groundwork for better funding in the future.

Although the original health care law has expired, money continued to flow through legislation passed in 1921, which acknowledged the nation's obligation to support health care needs of tribes.

the legislation faces criticism for the disparity in funding levels for different regions. In California there are no fully funded Indian Health Service hospitals.

That gap comes primarily from the priority given to fund facilities in regions with dense American Indian populations. While there are more American Indians in California than in any other state, some states in the Southwest have 16 times the population density.

The California Rural Indian Health Board fears the gap in facility funding may sink the bill.

Only 20 percent of the funding for the MACT facilities in those counties is paid by Indian Health Service.

The bill also ensures that any California tribes that remain unrecognized by Congress will not risk benefit cuts.

“The treaty rights are still there, we're still entitled to the service,”

We just want a fair chance to come to the bargaining table.

IGRA - Gaming and politics

Public Law 100-497-Oct. 17, 1988 100th Congress Sec. 2701.