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OFFICE OF THE SOLICITOR  
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Memorandum

To: Tara Sweeney, Assistant Secretary – Indian Affairs

Through: Kyle Scherer, Deputy Solicitor for Indian Affairs *Kyle Scherer*

Eric N. Shepard, Associate Solicitor, Division of Indian Affairs *ERIC SHEPARD* Digitally signed by ERIC SHEPARD Date 2020.06.11 16:27:19 -0400

John Hay, Acting Assistant Solicitor, Branch of Environment and Lands  
Division of Indian Affairs *John Hay*

From: Chris King, Attorney-Advisor, Division of Indian Affairs *Chris King*

Subject: Federal Jurisdiction Status of Oklahoma Tribes in 1934

This memorandum addresses the statutory authority of the Secretary of the Interior (“Secretary”) to acquire land in trust for Indian tribes in Oklahoma pursuant to the Indian Reorganization Act of 1934 (“IRA”). In connection with fee-to-trust applications pending before the Bureau of Indian Affairs (“BIA”), you have asked how Oklahoma tribes may be deemed eligible for trust land acquisitions in light of recent guidance issued by the Office of the Solicitor (“Solicitor’s Office”).<sup>1</sup> For the reasons explained below, we conclude that all federally recognized tribes in Oklahoma fall within either Step One or Step Two of the Solicitor’s Guidance, in that (1) post-1934 legislation specifically made the IRA applicable to them or (2) the text of the IRA itself is definitive evidence demonstrating that a tribe was “under federal jurisdiction” in 1934. These determinations under the Solicitor’s Guidance are consistent with previous analysis relied on to find the Secretary had authority to acquire land in trust for Oklahoma tribes.

**I. Background**

The Department’s land acquisition regulations require the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it. 25 C.F.R. §151.10(a). Section 5 of the IRA (“Section 5”) provides the Secretary with discretionary authority to acquire land in trust for “Indians.”<sup>2</sup> Section 19 of the IRA (“Section 19”) defines “Indian” to include several categories of persons:

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<sup>1</sup> *Procedure for Determining Eligibility for Land-into-Trust under the First Definition of “Indian” in Section 19 of the Indian Reorganization Act*, Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs (Mar. 10, 2020) (“Solicitor’s Guidance”).

<sup>2</sup> Act of June 18, 1934, c. 576, § 5, 48 Stat. 984 (“IRA” or “Act”), codified at 25 U.S.C. § 5108 (“The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,

[Category 1] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and [Category 2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [Category 3] all other persons of one-half or more Indian blood.<sup>3</sup>

In 2009, the United States Supreme Court (“Supreme Court”) in *Carcieri v. Salazar* construed the term “now” in Category 1 to refer to the date of the IRA’s enactment.<sup>4</sup> Thus, the Secretary’s authority to acquire land in trust for Indian tribes under Category 1 extended only to those tribes that were “under federal jurisdiction” when the IRA was enacted on June 18, 1934. The Supreme Court did not, however, consider the meaning of the phrases “under federal jurisdiction” or “recognized Indian tribe.”

To guide the implementation of the Secretary’s discretionary acquisition authority under Section 5 after *Carcieri*, the Department, in 2010, prepared a two-part procedure for determining when an applicant tribe was “under federal jurisdiction” in 1934.<sup>5</sup> The Solicitor later memorialized the Department’s interpretation in Sol. Op. M-37029.<sup>6</sup> Uncertainty persisted, however, over what evidence could be submitted for the inquiry and how the Department would weigh the probative value of such evidence. Tribes were devoting considerable resources to researching and collecting any and all forms of potentially relevant evidence; in some cases, leading to submissions totaling thousands of pages. To address these uncertainties, in 2018, the Solicitor’s Office began a review of Sol. Op. M-37029’s two-part eligibility procedure and the interpretation of Category 1 on which it relied.

On March 9, 2020, the Solicitor withdrew Sol. Op. M-37029. The Solicitor concluded that Sol. Op. M-37029’s interpretation of Category 1 was not consistent with the ordinary meaning, statutory context, legislative history, or contemporary administrative understanding of the phrase “recognized Indian tribe now under federal jurisdiction.”<sup>7</sup> In its place, the Solicitor issued a new, four-step procedure for determining eligibility under Category 1 to be used by attorneys in the Solicitor’s Office.<sup>8</sup>

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including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.”).

<sup>3</sup> 25 U.S.C. § 5129 (bracketed numerals added).

<sup>4</sup> 555 U.S. 379 (2009) (“*Carcieri*”).

<sup>5</sup> U.S. Dept. of the Interior, Assistant Secretary, 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) (“Cowlitz ROD”). See also Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs, Checklist for Solicitor’s Office Review of Fee-to-Trust Applications (Mar. 7, 2014), revised (Jan. 5, 2017).

<sup>6</sup> Sol. Op. M-37029, *The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act* (Mar. 12, 2014), withdrawn (Mar. 9, 2020).

<sup>7</sup> Sol. Op. M-37055, *Withdrawal of M-37029, The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act* (Mar. 9, 2020).

<sup>8</sup> See *supra* n.1.

At Step One, the Solicitor's Office determines whether or not Congress enacted legislation after 1934 making the IRA applicable to a particular tribe. The existence of such authority makes it unnecessary to determine if the tribe was "under federal jurisdiction" in 1934. In the absence of such authority, the Solicitor's Office proceeds to Step Two.

Step Two determines whether an applicant tribe was under federal jurisdiction in 1934, that is, whether the evidence shows that the federal government exercised or administered its responsibilities toward Indians in 1934 over the applicant tribe or its members as such. If so, the applicant tribe may be deemed eligible under Category 1 without further inquiry. The Solicitor's Guidance describes various types of evidence that unambiguously demonstrate that a tribe was under federal jurisdiction in 1934. In the absence of such dispositive evidence, the inquiry proceeds to Step Three.

Step Three determines whether an applicant tribe's evidence presumptively demonstrates that it was "recognized" in or before 1934, and that this jurisdictional status was maintained through 1934. The Solicitor determined that the phrase "recognized Indian tribe" as used in Category 1 does not have the same meaning as "federally recognized" (or "federally acknowledged"), a concept that did not evolve until the 1970s, after which it was formally incorporated in the Department's federal acknowledgment procedures.<sup>9</sup> Based on the Department's historic understanding of the term, the Solicitor's Guidance interpreted "recognition" to refer to indicia of congressional and executive actions either taken toward a tribe with whom the United States dealt on a more or less government-to-government basis or that clearly acknowledged a trust responsibility consistent with the evolution of federal Indian policy. The Solicitor's Guidance identifies forms of evidence that establish a rebuttable presumption that an applicant tribe was "recognized" in a political-legal sense before 1934 and remained under federal jurisdiction in 1934. In the absence of such evidence, the inquiry finally moves to Step Four.

Step Four assesses the totality of an applicant tribe's non-dispositive evidence to determine whether it is sufficient to show that a tribe was "recognized" in or before 1934 and remained "under federal jurisdiction" through 1934. Given the historical changes in federal Indian policy over time, and the corresponding evolution of the Department's responsibilities, a one-size-fits-all approach for evaluating the totality of a tribal applicant's evidence is not possible or desirable. Attorneys in the Solicitor's Office must evaluate the evidence on a case-by-case basis within the context of a tribe's unique circumstances, and in consultation with the Deputy Solicitor for Indian Affairs and the Associate Solicitor, Division of Indian Affairs.

## **II. Previous Analysis on the Secretary's Section 5 Authority**

Developed primarily by the Office of the Field Solicitor-Tulsa, the Department had previously relied on the notion of the IRA being a statute of general applicability and its specific directive defining the status of named Oklahoma tribes.<sup>10</sup> The analysis discussed how Congress provided

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<sup>9</sup> 25 C.F.R. Part 83.

<sup>10</sup> See Memorandum, Field Solicitor, Tulsa to Acting Regional Director-Eastern Oklahoma Region, BIA, *Status of Ottawa Tribe of Oklahoma as "under Federal jurisdiction" on June 18, 1934* (Sep. 28, 2010); Memorandum, Field Solicitor, Tulsa to Acting Regional Director-Eastern Oklahoma Region, *Status of certain Oklahoma tribes as "under Federal jurisdiction" on June 18, 1934* (Jan. 25, 2011); Memorandum, Field Solicitor, Tulsa to Regional Directors,

an opt-out provision in Section 18 of the IRA, where a majority of Indians on a reservation voting at a special election called by the Secretary could choose *not* to have the IRA apply. To accommodate the unique situation of tribes in Oklahoma, Congress specified in Section 13 of the IRA that certain provisions of the IRA would not be applicable to listed tribes, leaving the remaining provisions of the IRA to apply.<sup>11</sup> Section 13 of the IRA provides in relevant part:

[...] That sections 2,4,7,16,17 and 18<sup>12</sup> of this title shall not apply to the following named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek and Seminole.<sup>13</sup>

Because Section 13 did not include Section 5 in the list of IRA sections that would be inapplicable to the named Oklahoma tribes, Section 5 was understood to remain a source of authority for the Secretary to accept land in trust for the named Oklahoma tribes. Thus, the previous analysis concluded that Oklahoma tribes specifically named in Section 13 of the IRA were “under federal jurisdiction on June 18, 1934,” and the Secretary was authorized to take land into trust for such tribes pursuant to Section 5.<sup>14</sup>

Previous BIA decision documents approving a trust acquisition would include an authority statement that the listing of a tribe in Section 13 was sufficient for purposes of finding the tribe to be under federal jurisdiction in 1934.<sup>15</sup> In addition, decisions also cited the Oklahoma Indian Welfare Act (“OIWA”), when applicable, as it provides that all tribes that organized thereunder are entitled to enjoy the rights and privileges secured to any tribe that organized under the IRA.<sup>16</sup>

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Eastern Oklahoma and Southern Plains Regions, *Standard Carcieri language for select fee to trust decisions* (Feb. 4, 2014).

<sup>11</sup> By 1934, specific statutes applied to the Five Civilized Tribes and Osages and to the land base of Oklahoma tribes. Similarly, specific provisions in the IRA addressed Alaska where there were few reservations.

<sup>12</sup> Section 2 (25 U.S.C. § 5102) extended the existing periods of trust and any restriction on alienation placed upon Indian lands. Section 4 (25 U.S.C. § 5107) limited sales, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of the tribe or corporation organized under the Act. Section 7 (25 U.S.C. § 5110) authorized the Secretary to proclaim new reservations or add lands to existing reservations. Section 16 (25 U.S.C. § 5123) provided that any Indian tribe, or tribes, residing on the same reservation, the right to organize and adopt a constitution. Section 17 (25 U.S.C. § 5124) provides that the Secretary, upon a petition by at least one-third of the adult Indians, may issue a charter of incorporation to such tribe. Section 18 (25 U.S.C. § 5125) provided that the adult Indians on any reservation could vote in a special election to opt out of the IRA.

<sup>13</sup> 25 U.S.C. § 5118.

<sup>14</sup> See, 78 Cong. Rec. 11125-26 (June 12, 1934), where Mr. Thomas of Oklahoma, discussing the land acquisition provision, offers an amendment that passes, that section 5 expressly reference the purchase of lands for individual Indians. He wants the money available “not only in my State for individual Indians but in other States where Indian lands have been allotted.” See also, 78 Cong. Rec. 11739 (June 15, 1934), where Mr. Hastings of Oklahoma, points out that the amendment “exempts the various Indian tribes in Oklahoma” from various sections of the act and that he does “not object to assistance by the Government in the form of and to the extent of the purchase of land for landless and indigent Indians, and to additional appropriations for health work and for Indian education.” Thus, both Mr. Thomas and Mr. Hastings understood that section 5 was applicable in Oklahoma.

<sup>15</sup> Decision accepting Fountainhead Resort Property into trust for the Muscogee (Creek) Nation (Apr. 30, 2018).

<sup>16</sup> 25 U.S.C. § 5203.

If the applicant tribe organized under the OIWA, the previous analysis concluded that Section 5 of the IRA was an available source of authority for trust acquisitions.<sup>17</sup> As detailed below, these rationales remain consistent with positive findings under Step One and Step Two of the Solicitor's Guidance.

### **III. Oklahoma Trust Acquisitions under the Solicitor's Guidance**

#### **A. Step One and the Oklahoma Indian Welfare Act**

As noted in the Solicitor's Guidance, *Carcieri* acknowledged that Congress could choose to expand the Secretary's acquisition authority to a tribe that may not necessarily meet Section 19's definition of "Indian" under Category 1.<sup>18</sup> Step One of the Solicitor's Guidance counsels that when Congress enacted legislation after 1934 that made the IRA applicable to a particular tribe, such legislation effectively moots the need to determine that tribe's eligibility under Section 19.<sup>19</sup> The OIWA is precisely such a statute, as it provides the Secretary with an explicit source of authority to take land into trust for Oklahoma tribes pursuant to Section 5 of the IRA.

#### **1. Tribes Organized under the OIWA Before 1944**

In the Haas Report – identified in the Solicitor's Guidance as providing unambiguous evidence of jurisdictional status in 1934 – the Department listed those Oklahoma tribes that had constitutions and charters ratified pursuant to the OIWA between 1937 and 1944. As inclusion on this list<sup>20</sup> confirms the separate statutory authority of the OIWA to accept land into trust, the below tribes satisfy the requirements at 25 C.F.R. § 151.10(a) under Step One of the Solicitor's Guidance:

*Absentee-Shawnee Tribe of Indians of Oklahoma\**  
*Alabama-Quassarte Tribal Town*  
*Caddo Indian Tribe of Oklahoma*  
*Cheyenne-Arapaho Tribes, Oklahoma\**  
*Citizen Potawatomi Nation, Oklahoma\**  
*Eastern Shawnee Tribe of Oklahoma*  
*Iowa Tribe of Oklahoma*  
*Kialegee Tribal Town*  
*Kickapoo Tribe of Oklahoma*  
*Miami Tribe of Oklahoma*  
*Ottawa Tribe of Oklahoma*  
*Pawnee Nation of Oklahoma*

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<sup>17</sup> Decision accepting Stone Wolf Expansion Site into trust for Pawnee Nation of Oklahoma (Oct. 27, 2019).

<sup>18</sup> 555 U.S. at 391-392.

<sup>19</sup> Solicitor's Guidance at 2.

<sup>20</sup> Theodore Haas, *Ten Years of Tribal Government Under the I.R.A.* at 28 (U.S. Indian Service Tribal Relations Pamphlets 1947) (hereafter "Haas Report"). The Haas Report listed the name of the tribes as then known, organized by agency, along with their population and dates of constitution and charter ratification pursuant to the OIWA. An \* indicates that the Haas Report listed such tribes as having only a constitution approved by the Department pursuant to the OIWA. Tribes listed in italics were also included within IRA Section 13. For ease of application, this list reflects tribal names as identified in the Federal Register Notice at 85 Fed. Reg. 5462 (Jan. 30, 2020).

Peoria Tribe of Indians of Oklahoma  
*Sac & Fox Nation, Oklahoma\**  
*Seneca-Cayuga Nation*  
Thlopthlocco Tribal Town  
*Tonkawa Tribe of Indians of Oklahoma\**  
*Wyandotte Nation*

## 2. Tribes Organized under the OIWA After 1944

Subsequent to the compilation of the Haas Report, additional tribal entities ultimately organized under the OIWA, thus satisfying Step One of the Solicitor's Guidance. The BIA's Southern Plains and Eastern Oklahoma Regional Offices confirmed that the below listed tribes were organized under the OIWA after 1944.

Apache Tribe of Oklahoma<sup>21</sup>  
The Choctaw Nation of Oklahoma<sup>22</sup>  
Comanche Nation, Oklahoma<sup>23</sup>  
Delaware Nation, Oklahoma<sup>24</sup>  
Delaware Tribe of Indians<sup>25</sup>  
Fort Sill Apache Tribe of Oklahoma<sup>26</sup>  
Kaw Nation, Oklahoma<sup>27</sup>  
Kiowa Indian Tribe of Oklahoma<sup>28</sup>  
The Muscogee (Creek) Nation<sup>29</sup>  
Otoe-Missouria Tribe of Indians, Oklahoma<sup>30</sup>

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<sup>21</sup> Constitution approved by the Commissioner of Indian Affairs on Dec. 1, 1971; ratified by voters Feb. 5, 1972. These dates, and those cited for the tribes listed below represent the first instance of a constitution being approved pursuant to the OIWA. Some tribes, like the Choctaw Nation of Oklahoma, had constitutions that pre-dated the IRA and the OIWA, and most have had subsequent amendments beyond the dates cited herein.

<sup>22</sup> Constitution approved by Acting Deputy Commissioner of Indian Affairs on Mar. 21, 1979.

<sup>23</sup> Constitution approved, as ratified, by Commissioner of Indian Affairs on Nov. 19, 1966.

<sup>24</sup> Constitution approved by the Commissioner of Indian Affairs on Feb. 13, 1973; ratified by voters Apr. 21, 1973.

<sup>25</sup> Memorandum, Principal Deputy Assistant Secretary-Indian Affairs to Regional Director, Eastern Oklahoma Region, *Delaware Tribe of Indians Secretarial Election* (Jul. 28, 2009) (approving a vote to adopt a constitution reorganizing under the OIWA). *See also* Memorandum, Field Solicitor, Tulsa to Regional Director, Eastern Oklahoma Region, *Determination of Whether the Delaware Tribe of Indians was "Under Federal Jurisdiction" in 1934* (Feb. 29, 2016). The 2016 memorandum explains the Delaware's history, the litigation surrounding the relationship to the Cherokee Nation, and organization pursuant to the OIWA in 1962 and 2009. While it concluded Delaware was under federal jurisdiction in 1934 by virtue of being listed in Section 13 of the IRA, a review under the new guidance could end at Step 1 on account of their being organized under the OIWA.

<sup>26</sup> Constitution and bylaws approved by Commissioner of Indian Affairs on Aug. 18, 1976.

<sup>27</sup> Constitution and bylaws adopted by voters on Oct. 7, 1958 and approved by the Secretary of the Interior on Jul. 23, 1959.

<sup>28</sup> Constitution approved by Acting Associate Commissioner of Indian Affairs on Mar. 13, 1970 and ratified by voters on May 23, 1970.

<sup>29</sup> Constitution approved by Acting Deputy Assistant Secretary-Indian Affairs on Aug. 17, 1979 and ratified by voters on Oct. 6, 1979. *See also Harjo v. Kleppe*, 420 F.Supp. 1110 (D.D.C. 1976) (leading to the re-organization of the Muscogee (Creek) Nation in its current structure).

<sup>30</sup> Constitution approved by Deputy Assistant Secretary-Indian Affairs on Oct. 6, 1983 and ratified by voters on Feb. 4, 1984.

### 3. Other Relevant Legislation for Oklahoma Tribes

Additional legislation also affected the status of certain Oklahoma tribes following passage of the IRA and the OIWA. In 1946, Congress recognized the United Keetoowah Band of Cherokee Indians as a band of Indians residing in Oklahoma within the meaning of the OIWA.<sup>32</sup> On this basis, the Department has taken land into trust for the United Keetoowah Band.<sup>33</sup>

Between 1954 and 1956, Congress terminated the government-to-government relationship and federal supervision over the Modoc, Wyandotte, Peoria, and Ottawa Tribes with further provision that charters previously approved pursuant to the OIWA would be revoked.<sup>34</sup> In 1978, Congress reversed course to reinstate all rights and privileges of these tribes under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to their termination statutes.<sup>35</sup> The 1978 Act also recognized and extended the provisions of the OIWA to the Modoc Nation, the only tribe of the four terminated tribes not previously organized under the OIWA.<sup>36</sup>

In 2000, Congress reaffirmed the federal recognition and trust relationship with the Shawnee Tribe with specific provision that they would have the right to organize under the OIWA and be eligible to have land taken into trust pursuant to Section 5 of the IRA.<sup>37</sup>

By virtue of specific statutory authority bringing them within the scope of the OIWA, and/or the IRA, these tribes also satisfy the requirements at 25 C.F.R. § 151.10(a) under Step One of the Solicitor's Guidance.

#### B. Step Two and Section 13 of the IRA

The Solicitor's Guidance at Step Two instructs the Department to look to several forms of unambiguous evidence to conclude whether an applicant tribe was under federal jurisdiction in

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<sup>31</sup> Constitution and bylaws approved by the Assistant Secretary of the Interior, ratified by voters Sep. 20, 1950.

<sup>32</sup> 60 Stat. 976. Constitution, bylaws, and Corporate charter ratified Oct. 2-3, 1950.

<sup>33</sup> See Decisions concerning 76-acre tract in Cherokee County by the Assistant Secretary-Indian Affairs (Sep. 10, 2010) and Eastern Oklahoma Regional Director (May 24, 2011).

<sup>34</sup> See 68 Stat. 718 (Modoc terminated under the Klamath Termination Act), 70 Stat. 893 (Wyandotte), 70 Stat. 937 (Peoria), and 70 Stat. 963 (Ottawa).

<sup>35</sup> See 92 Stat. 246. The Ottawa had a new constitution approved by the Commissioner of Indian Affairs on Oct. 15, 1979, ratified by voters Dec. 19, 1980. The Peoria had a new constitution approved by the Commissioner of Indian Affairs on May 29, 1980, ratified by voters on Jul. 30, 1981. The Wyandotte had a new constitution approved on May 30, 1985. These dates reflect the first approvals of governing documents following the 1978 Act. These constitutions have undergone subsequent amendments. See also Memorandum, Field Solicitor, Tulsa to Acting Regional Director, Eastern Oklahoma Region, *Status of Ottawa Tribe of Oklahoma as "under Federal jurisdiction" on June 18, 1934* (Sep. 28, 2010).

<sup>36</sup> 92 Stat. 246 at §2. Previously known as the Modoc Indian Tribe of Oklahoma, the 1978 Act directed the Secretary to offer them assistance in organizing under section 3 of the OIWA. The Modoc Tribe's constitution was approved by the Department, pursuant to the authority of OIWA and the 1978 statute, on Jul. 27, 1990.

<sup>37</sup> 114 Stat. 2913. The statute contains the restriction that no land recognized by the Secretary to be within the Cherokee Nation or any other tribe may be taken into trust without those tribes' consent.

1934.<sup>38</sup> Although not explicitly referenced at Step Two of the Solicitor’s Guidance, the IRA’s specific inclusion of the named Oklahoma tribes in Section 13 is nonetheless unambiguous evidence that Congress understood them to be under federal jurisdiction at the time of the IRA’s enactment. As explained above, the IRA was a statute of general applicability, where acquisition authority under Section 5 would be available unless a tribe voted to reject the IRA in a Section 18 election. Inclusion in the list of tribes at Section 13 provides unambiguous evidence that Congress considered such tribes to have been within the federal government’s Indian affairs authority in 1934. The below tribes identified in Section 13 are those that did not subsequently organize under OIWA.<sup>39</sup>

Cherokee Nation  
Quapaw Nation  
Seminole Nation of Oklahoma  
The Chickasaw Nation  
The Osage Nation  
Wichita and Affiliated Tribes (Wichita, Keechi, Waco, and Tawakonie)

For the above listed tribes, Category 1 is satisfied through application of Step Two of the Solicitor’s Guidance. As such, the Secretary has the statutory authority to accept land in trust for such tribes under Section 5 of the IRA.

Though we conclude that the Secretary possesses the statutory authority to accept land in trust for all tribes in Oklahoma, we note that it is the responsibility of the Department to thoroughly document the reasoning and justification for such a conclusion in each notice of decision in order to withstand scrutiny by the Interior Board of Indian Appeals or federal courts.<sup>40</sup>

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<sup>38</sup> See Solicitor’s Guidance at 2-6, discussing the following forms of evidence as presumptively showing that an applicant tribe was under federal jurisdiction in 1934: holding of Section 18 elections, adoption of Section 16 constitutions, approval of Section 17 charters, the continuing existence of treaty rights, inclusion on the 1934 Indian Population Report, land acquisitions prior to 1934, and inclusion within Kappler’s *Indian Affairs Laws and Treaties*.

<sup>39</sup> For ease of application, this list reflects tribal names as identified in the Federal Register Notice at 85 Fed. Reg. 5462 (Jan. 30, 2020).

<sup>40</sup> For ease of reference, we have included a table listing the tribes and relevant categorizations and dates. We recognize that “*Carcieri*” or “under federal jurisdiction” opinions have been prepared in the past by the Office of the Solicitor and relied upon in trust acquisition decisions for certain Oklahoma tribes. While pre-existing opinions may be relied upon for their factual background and historical narratives, the authority analysis for future acquisitions should be explained within the context of the Solicitor’s Guidance as discussed herein.



Oklahoma Tribes	Listed in IRA Section 13	Organized Under OIWA from 1937-1944 (Haas List)	Organized under OIWA after 1944	Statutory Notes
Absentee-Shawnee Tribe of Indians of Oklahoma	Shawnee*	Absentee-Shawnee Tribe of Indians of Oklahoma		
Alabama-Quassarte Tribal Town		Alabama-Quassarte Tribal Town		
Apache Tribe of Oklahoma	Apache*		Apache Tribe of Oklahoma (1972)	
Caddo Nation of Oklahoma	Caddo	Caddo Indian Tribe of Oklahoma		
Cherokee Nation	Cherokee*			
Cheyenne and Arapaho Tribes, Oklahoma	Cheyenne and Arapaho**	Cheyenne-Arapaho Tribes of Oklahoma		
Citizen Potawatomi Nation, Oklahoma	Pottawatomi	Citizen Band Pottawatomi Nation of Oklahoma		
Comanche Nation, Oklahoma	Comanche		Nov. 19, 1966	
Delaware Nation, Oklahoma	Delaware		Feb. 13, 1973; ratified by voters Apr. 21, 1973	
Delaware Tribe of Indians	Delaware		May 31, 1962; Dec. 22, 2008	
Eastern Shawnee Tribe of Oklahoma	Shawnee*	Eastern Shawnee Tribe of Indians, Oklahoma		
Fort Sill Apache Tribe of Oklahoma	Apache*		Aug. 18, 1976	
Iowa Tribe of Oklahoma	Iowa	Iowa Tribe of Oklahoma		
Kaw Nation, Oklahoma	Kaw		Jul. 23, 1959	
Kialegee Tribal Town		Kialegee Tribal Town		
Kickapoo Tribe of Oklahoma	Kickapoo	Kickapoo Tribe of Oklahoma		
Kiowa Indian Tribe of Oklahoma	Kiowa		Mar. 13, 1970: ratified by voters on May 23, 1970.	
Miami Tribe of Oklahoma		Miami Tribe of Oklahoma		
Modoc Nation			Jul. 27, 1990	68 Stat. 781 (termination); 92 Stat. 246 (restoration)
Ottawa Tribe of Oklahoma	Ottawa	Ottawa Tribe of Oklahoma	Oct. 15, 1979; ratified by voters Dec. 19, 1980	70 Stat. 963 (termination); 92 Stat. 246 (restoration)
Otoe-Missouria Tribe of Indians, Oklahoma	Otoe		Oct. 6, 1983; ratified by voters on Feb. 4, 1984.	
Pawnee Nation of Oklahoma	Pawnee	Pawnee Indians of Oklahoma		
Peoria Tribe of Indians of Oklahoma		Peoria Tribe of Indians of Oklahoma	May 29, 1980; ratified by voters on Jul. 30, 1981	70 Stat. 937 (termination); 92 Stat. 246 (restoration)
Ponca Tribe of Indians of Oklahoma	Ponca		May 23, 1950; ratified by voters Sep. 20, 1950	
Quapaw Nation	Quapaw			
Sac & Fox Nation, Oklahoma	Sac and Fox	Sac and Fox Tribe of Indians of Oklahoma		
Seneca-Cayuga Nation	Seneca	Seneca-Cayuga Tribe of Oklahoma		
Shawnee Tribe	Shawnee*			114 Stat. 2913
The Chickasaw Nation	Chickasaw			

Oklahoma Tribes	Listed in IRA Section 13	Organized Under OIWA from 1937-1944 (Haas List)	Organized under OIWA after 1944	Statutory Notes
The Choctaw Nation of Oklahoma	Choctaw		Mar. 21, 1979	
The Muscogee (Creek) Nation	Creek		Aug. 17, 1979; ratified by voters on Oct. 6, 1979	
The Osage Nation	Osage			
The Seminole Nation of Oklahoma	Seminole			
Thlopthlocco Tribal Town		Thlopthlocco Tribal Town		
Tonkawa Tribe of Indians of Oklahoma	Tonkawa	Tonkawa Tribe of Indians of Oklahoma		
United Keetoowah Band of Cherokee Indians in Oklahoma	Cherokee*		Oct. 2-3, 1950	60 Stat. 976
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma	Wichita			See Governing Resolution (non-OIWA) adopted May 8, 1961, approved Aug. 8, 1961
Wyandotte Nation	Wyandotte	Wyandotte Tribe of Oklahoma	May 30, 1985.	70 Stat. 893 (termination); 92 Stat. 246 (restoration)

\*Section 13's references to Apache, Shawnee, Delaware, and Cherokee could arguably refer to more than one federally recognized tribe.

\*\* Cheyenne and Arapaho are listed separately in Section 13