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INDIAN LAW

The Department of the Interior’s Office of the Solicitor withdrew on March 9, 2020 Sol. Op. M-37029 (Mar. 12, 2014) that stated the Office’s views concerning the meaning of the phrase “under federal jurisdiction” as used in the first “Indian” definition in Section 19 of the Indian Reorganization Act, 25 U.S.C. § 5108. The March 10, 2020 Memorandum announcing the withdrawal stated the Solicitor’s conclusion that the 2014 Memorandum “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.” As explained in a March 5, 2020 Deputy Solicitor Memorandum, the principal point of interpretative difference lies in the words “recognized Indian tribe” that immediately precede “now under federal jurisdiction.” The 2014 Memorandum recognized, in light of *Carcieri v. Salazar*, 555 U.S. 379 (2009), the “now” refers to the date of the IRA’s becoming law in 1934. However, it construed the term “recognized Indian tribe” also to include tribes, although “under federal jurisdiction” in 1934, did not acquire “recognized” status until after that date. The March 5 Deputy Solicitor Memorandum construes the phrase “recognized Indian tribe now under federal jurisdiction” to refer “to tribes *previously* placed under federal authority through congressional or executive action who *remained* under federal authority in 1934.” The Memorandum therefore answers the question not addressed in the *Carcieri* majority opinion and rejects the construction suggested in Justice Breyer’s concurring opinion. *See* 555 U.S. at 398 (“The statute, after all, imposes no time limit upon recognition.”). The Solicitor’s March 10 Memorandum additionally sets out a four-step procedure for determining eligibility for land-into-trust applications under the first definition of “Indian” in Section 19.

Links follow to the Solicitor’s March 10, 2020 Memorandum to the Assistant Secretary-Indian Affairs re Determining Eligibility for Land-Into-Trust under the First Definition of “Indian” in Section 19 of the Indian Reorganization Act and to the two Memorandums discussed above.

Solicitor’s Memo re Determining Eligibility for Land into Trust under Category 1
https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Solicitors_Memo_re_Determining_Eligibility_for_Land_into_Trust_under_Category_1.pdf

Solicitor’s Procedures for Determining Eligibility for Land into Trust under Category 1
https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Solicitors_Procedures_for_Determining_Eligibility_for_Land_into_Trust_under_Category_1.pdf

Deputy Solicitor’s Memo re Determining Eligibility for Land into Trust under Category 1

https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Deputy_Solicitors_Memo_re_Determining_Eligibility_for_Land_into_Trust_under_Category_1.pdf