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DEPUTATION AGREEMENT

WHEREAS, pursuant to the Indian Law Enforcement Reform Act, 28 USC, §2801, et seq., the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA), is responsible for providing, or assisting in providing law enforcement in Indian country; and

WHEREAS, the Secretary has delegated this authority to the Assistant Secretary - Indian Affairs and the Assistant Secretary - Indian Affairs has redelegated this authority to the Director of the BIA, who has redelegated it to the Deputy Bureau Director, Law Enforcement Services, BIA, and the Deputy Director has redelegated it to the Special Agents in Charge; and

WHEREAS, the Assistant Secretary - Indian Affairs is committed to working with tribal governments and tribal law enforcement to strengthen law enforcement in Indian country; and

WHEREAS, on February 10, 2004, the Assistant Secretary - Indian Affairs articulated policy guidance to the BIA - as published at 69 Fed.Reg. 6,321 - to govern the implementation of Special Law Enforcement Commission Deputation Agreement; and

WHEREAS, this policy expressly lays out issues regarding good faith efforts on behalf of all parties involved in the aforementioned agreements, including as they related to liability;

WHEREAS, the Tribe asserts that local law enforcement is slow to respond to crimes committed on the Hopland Indian Reservation; and

WHEREAS, Tribal police, because of their presence on the Reservation, serve as first responders for crimes that take place on the Reservation; and

WHEREAS, the closest BIA law enforcement personnel are in Sacramento; and

WHEREAS, it is the position of local and state law enforcement officials that because the Tribal police lack federal police officer status, Tribal police are denied access to National Crime Information Center ("NCIC"), thereby denying the Tribal police the tools available to other law enforcement personnel that are necessary to protect tribal members; and

WHEREAS, the Tribe has noticed that serious felony offenses as defined by the FBI's Uniform Crime Reporting System, are increasing;

WHEREAS, the Tribe will submit within seven days of execution of this Agreement a letter and the Meese Declaration documenting the need for federal law enforcement services on the Tribe's Reservation.

IT IS THEREFORE RESOLVED that the BIA, Office of Law Enforcement Services and Security (OLES) and the Hopland Band of Pomo Indians Tribe enter into this Deputation

Agreement to govern the BIA OLES's issuance of Special Law Enforcement Commissions, pursuant to the Assistant Secretary - Indian Affairs' Cross-Deputation Agreements, Memoranda of Understanding, Memoranda of Agreement, and Special Law Enforcement Commission Deputation Agreements, FR Doc. 04-2842, policy guidance.

This Deputation Agreement is entered into this 27th day of January, 2005, by and between the Tribe, a federally recognized Indian tribe, and the BIA, OLES, Department of the Interior, pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. §2801, et seq., and related Hopland Band of Pomo Indians tribal ordinances, which provide for cooperative agreements to promote better law enforcement services. The Tribe has enacted Resolution No. 03-07-31A, which authorizes the Hopland Tribal Police Department ("HTPD") to enter into this Agreement on the Tribe's behalf and also authorizes the Hopland Band of Pomo Indians Tribal Law Enforcement Officers ("Officers"), under a BIA Special Law Enforcement Commission (SLEC) issued through the Secretary of the Interior, to enforce federal laws in Indian country.

The intent of this Agreement is to provide for the deputation of law enforcement officers employed by the Hopland Band of Pomo Indians (hereinafter referred to as the "Tribe"), which is a party to this Agreement, so that the Tribe's Law Enforcement officers will be authorized to assist the BIA in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the Tribe or as described in section 5. It is the express desire and intent of both parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations.

Both parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know whether the suspect or the victim is an Indian or non-Indian, or whether the arrest or the suspected crime has occurred in Indian country, as defined by 18 U.S.C. §1151, and that, therefore, there is great difficulty in determining immediately the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by a prosecutor from one of the various jurisdictions, not by cross-deputized arresting officers who may deliver the offender to the appropriate detention facility.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties that previously resulted in the reluctance of various law enforcement agencies to provide services in Indian country for fear of being subjected to tort and civil rights suits as a consequence of the enforcement or carrying out in Indian country of certain federal law. To eliminate such concerns, pursuant to the authority granted by 25 U.S.C. §2804(a) and (f), a Tribal Law Enforcement Officer who is deputized by the Bureau of Indian Affairs Special Law Enforcement Commission will be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while enforcing or carrying out laws of the United States covered by this deputation agreement, to the extent outlined in this agreement. Both parties to this Agreement (BIA, Tribe), therefore, agree as follows:

1. Purpose.

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in Indian country in the State of California, and its terms should be interpreted in that spirit. Accordingly, both parties to this Agreement shall cooperate with each other to provide comprehensive and thorough law enforcement protection, including but not limited to effecting arrests, responding to calls for assistance from all citizens and also from other law enforcement officers, performing investigations, providing technical and other assistance, dispatching, and detention. This Agreement is entered into pursuant to the Indian Law Enforcement Reform Act of 1990. The Secretary's revocation or termination of this Agreement is subject to the appeal and review procedure provided below.

2. Commissions.

- A. The BIA as a party to this Agreement shall, issue special law enforcement commissions to the law enforcement officers of the Tribe, upon the application of such officers and the BIA's reasonable determination that the officers are qualified and eligible and there is a need if the number of commissioned officers exceeds ten. Such commissions shall grant the officers the same law enforcement authority as that of officers of the BIA (unless specifically limited by the terms of the commission), as more specifically described in Section 3 of this Agreement. When the BIA issues such a commission, it shall provide notice of that commission, including the name of the officer receiving the commission, to any other agencies that are parties to this Agreement or that should be aware of this Agreement. The BIA further has the authority to evaluate the effectiveness of the commissions and to investigate any allegations of misuse of authority. 25 C.F.R. §12.21. Pursuant to such evaluation, the BIA has the authority to revoke a deputation agreement with a law enforcement agency or to revoke an individual officer's SLEC subject to the review procedures below.
- B. A commission shall not be granted unless the applicant has complied with all the prerequisites for appointment as a police officer as set forth in 25 C.F.R. Part 12 and with the specific requirements of the commissioning agency including but not limited to BIA training requirements as outlined in the BIA Law Enforcement Handbook. Those prerequisites must include the following:
1. United States citizenship;
 2. A high school diploma or equivalent;
 3. No conviction for a felony, a misdemeanor which restricts the ability to carry firearms, or other crime involving moral turpitude (including any convictions expunged from an individual's record);

4. Documentation of semi-annual weapons qualifications; and
5. A finding by a psychiatrist or psychologist licensed to practice within the State of California that the applicant is free from any emotional or mental condition that might adversely affect his or her performance as a police officer.
6. A finding by a physician or surgeon licensed to practice within the State of California that the applicant is free from any physical, emotional or mental condition that might adversely affect his or her performance as a police officer.

Further, an officer seeking a SLEC must not have been found guilty or, or entered a plea or *nolo contendere* or its equivalent (such as an *Alford* plea), or pleaded guilty to any felonious offense, or any of certain misdemeanor offenses under federal, state or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact, or prostitution, or crimes against persons, or offenses committed against children.

- C. Where a current FBI criminal background check is lacking or needs to be supplemented, the applicant's agency shall provide a Federal Bureau of Investigation criminal history background check on the applicant.
- D. If BIA denies an officer a commission, it shall disclose the grounds for such denial in writing to the Tribe which employs the applicant.
- E. The BIA may, at any time, suspend or revoke a law enforcement officer's commission for reasons solely within its reasonable discretion. The BIA shall notify the officer and the HTPD of the suspension or revocation and the reasons therein and the officer's right to appeal as set forth below. Within ten (10) days of such notification, HTPD shall cause the commission card and any other evidence of the commission to be returned to the BIA.
- F. If the commissioned officer's agency possesses or comes to possess any information on the officer, which provides grounds for the suspension or revocation of the commission, it shall immediately notify the BIA.
- F. A commission issued by the BIA under this agreement shall not be used to invoke any State of California authority; provided, however that nothing in this Agreement shall preclude an officer commissioned under this Agreement from being deputized as a peace officer under California Penal Code § 830.6 and from enforcing state law pursuant to said deputization. Officers holding SLECs who

are responding to a call, conducting an investigation, or otherwise exercising their authority shall, in their discretion and in the exercise of sound police judgment, address any potential violations of federal or tribal law.

3. Scope of Powers Granted.

- A. Officers carrying SLECs issued by the BIA pursuant to this agreement have the power to enforce:

(1) All Federal laws applicable within Indian country, and specifically the Tribe's Indian country, excluding the General Crimes Act, 18 U.S.C. §1152, and the Major Crimes Act, 18 U.S.C. §1153, consistent with the authority conveyed pursuant to Federal law through the issuance of commissions or other delegations of authority (see Appendix A, which includes an illustrative list of federal statutes that officers may be called upon to enforce; this list is not exhaustive) and (2) all laws of the Tribe, including lawful orders issued by the Hopland Tribal Court to the extent authorized by 25 U.S.C. § 2804 and 25 C.F.R. § 12.22.

- B. Both parties to this Agreement note that the applicability of federal and tribal laws in Indian country may depend on whether the suspect or the victim is Indian, that California criminal prohibitory statutes are applicable to Indians in Indian country and the parties agree that nothing in this agreement makes any law applicable to a certain person or certain conduct where it would not otherwise be applicable. (A qualified immunity defense may still be available in appropriate circumstances notwithstanding this limitation.) Accordingly, this agreement provides SLEC Officers the authority to enforce applicable federal laws. This includes statutes set forth in the local U.S. Attorney Guidelines as well as all laws and statutes applicable in Indian country as described in Section 3.A and Appendix A.

- C. Nothing in this agreement limits, alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search and seizure, or to issue service of process. Similarly, nothing in this agreement is intended to impair, limit, or affect the status of any agency or the sovereignty of any government. Lawful actions pursuant to this federal agreement and a commission issued under it supersede any contract tribal, state, or local law, ordinance, or practice.

4. Uniform, Vehicles and Weapons.

- A. Except when on plain clothes assignment all SLEC Officers shall be in uniform and carry a weapon where required to do so by their duties. SLEC Officers may operate marked police vehicles equipped with light bars and siren.

- B. SLEC Officers that are temporarily off duty or whose duty is temporarily interrupted for any reason who remain in uniform, or in a marked vehicle shall be prepared for duty so that they are available to respond to emergency calls.
 - C. SLEC Officers and their supervisors may make exceptions to this requirement for undercover operations or otherwise on a case-by-case basis.
5. Travel Outside of Indian Country.
- A. The ordinary duty stations of BIA police officers are located within the boundaries of Indian country. In some situations, however, BIA police officers will be required to leave Indian country as a part of or incidental to their duties. This may occur, for example, where they are responding to an incident in another area of Indian country, where they are transporting evidence or suspects to or from locations in Indian country or to or from other police, court, or prison facilities; when they reside off-reservation and are traveling to their duty station or responding to an emergency call; or when they must obtain products or services located off-reservation while on duty or in the normal course of their business day.
 - B. When on duty as a SLEC Officer traveling outside of Indian country, SLEC Officers retain their status as federal law enforcement officials. They are, therefore, expected as a rule to be in uniform and to operate marked police vehicles as set forth in paragraph 4. They may also be armed; may transport evidence; and may exercise the authority of law enforcement officers to maintain control of suspects in such situations. They may also perform comparable incidental federal police activities outside of Indian country, but will not as a rule conduct investigations or make arrests outside of Indian country, absent exigent circumstances, or (1) a nexus to a crime committed in Indian country, and (2) communications and coordinating with the appropriate local or federal authorities over procedures and methods. As used herein the term "exigent circumstances" may mean if the crime is committed in the SLEC Officer's presence and the acts of the perpetrator(s) pose a threat of physical harm to a person or threat of destruction of property.
6. Officers Holding SLECs.
- A. Officers holding SLECs are treated as BIA police officers for enforcing federal laws. They, therefore, will conform to all requirements and limitations set forth in this agreement.
 - B. Except as set forth in paragraph 4A above, in any situation in which an officer holding a SLEC might receive a call related to a potential federal offense, that officer will be in uniform and in a vehicle equipped as set forth in paragraph 4.

Such an officer may undertake off-reservation travel as set forth in paragraph 5.

- C. In any situation in which an officer holding a SLEC is responding to a call that may involve a federal offense, or undertaking any other duties that relate to or may potentially relate to their federal functions, he or she will conform to the provisions of this agreement, and in particular those in paragraph 5. The officer will function as a BIA police officer, as set forth in paragraph 5, irrespective of the boundaries of the Tribe's reservation or the location of Indian country.
- D. When an officer holding a SLEC receives an emergency call in circumstances where a federal offense may exist, if he or she responds, he or she will travel to the site of the call as rapidly as it is possible to do without compromising safety, irrespective of the boundaries of Indian country or his or her present location. He or she will observe the restrictions on the activation of emergency mode and the precautions for the safety of bystanders required in the BIA, OLES Law Enforcement Handbook and otherwise respond as appropriate and prudent. In instances where the state has criminal jurisdiction in Indian country, and where there is no significant reason to anticipate that a federal offense may exist with respect to a particular emergency call, tribal law enforcement officers will respond in accordance with policies and practices set forth under state and local law, but may, in certain circumstances, retain their federal status.
- E. When located outside of Indian country, officers holding SLECs may respond to observed violations of federal law in a public safety emergency as appropriate and prudent. Irrespective of their location, officers holding SLECs may only respond to violations of exclusively state law to the extent consistent with that state's law. Officers carrying SLECs may respond to concurrent violations of state, tribal and federal laws to the extent consistent with tribal or federal law.

7. Disposition and Custody.

- A. Any person arrested by an officer commissioned pursuant to this agreement shall immediately be brought to the attention of a responsible official of the apparent prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the officer shall attempt to determine, where practicable, whether the arrestee is Indian or non-Indian. The official determination of proper jurisdiction, however, will be made by a prosecutor, not a law enforcement officer commissioned under this agreement.
- B. The agency with whom the arresting officer is employed shall ensure the arrestee appears before a judge of the appropriate jurisdiction for initial appearance and bond setting within the time guidelines of the tribal, state or federal law as may be appropriate.

- C. In the event an Indian detainee or prisoner requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest emergency medical facility.
- D. Nothing in this Agreement shall preclude the Tribe from negotiating an agreement with the Mendocino County Sheriff for the detention at the Mendocino County jail of persons arrested by SLEC Officers.

8. Liabilities and Immunities.

- A. It is understood and agreed that each agency which is a party to this agreement, its agents, employees and insurers do not, by virtue of this agreement, assume any responsibility or liability for the actions of officers commissioned pursuant to this agreement which are performed outside the course and scope of their duties.
- B. Notwithstanding subsection A, any Hopland Band of Pomo Indian Tribal Law Enforcement Officer who is deputized by the Bureau of Indian Affairs Special Law Enforcement Commission will only be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act (FTCA) while carrying out those laws applicable in Indian country as described in Section 3.A and Appendix A. Therefore, such officer will not be deemed a federal employee under 25 U.S.C. 2804(f)(1) and under the Federal Tort Claims Act with respect to the enforcement of any other law except those applicable in Indian country as described in Section 3.A and Appendix A, under 43 C.F.R. Part 22, in connection with any exercise of BIA law enforcement responsibility to the extent permitted by applicable law.
- C. Nothing in this Agreement shall be read as waiving or limiting any defenses to claims of liability otherwise available to law enforcement officers, such as the defense of qualified immunity.
- D. Nothing in this agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.
- E. The Tribe specifically agrees to hold the United States harmless under this agreement for any civil claim brought against an officer carrying a SLEC arising out of law enforcement activity, except for actions within the course and scope of authority delegated by this agreement, provided, however, that this hold harmless provision shall not be applicable to any obligation of the United States arising out of a relationship between the United States and the Tribe not created under this agreement.
- F. The Tribe agrees that the United States has no obligation under this Agreement to provide legal representation for any constitutional claim for any officer carrying a

SLEC except as provided by 28 C.F.R. 50.15(a), such that: (1) providing representation would otherwise be in the interest of the United States, and (2) the event from which the claim arises is within the scope of authority delegated by this Agreement.

- G. Final determination for FTCA related matters will be made by the United States Department of Justice pursuant to 28 C.F.R. 50.15(a).

9. Additional Parties.

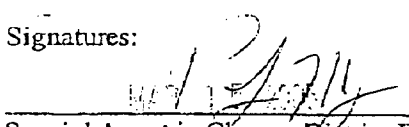
It is understood by the parties to this agreement that additional agencies with law enforcement responsibilities may join as parties hereto, and that amendment may be made to the terms of this agreement only with the express agreement of all the parties signatory to this agreement.

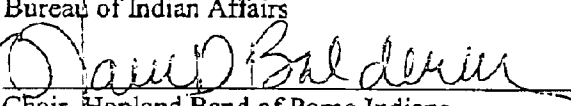
10. Appeal Procedure.

Appeals of termination and revocation of this Agreement or suspension or revocation of commissions issued herein shall be made to the Associate Director of Operations, BIA-OLES. The Associate Director's decision shall be final agency action subject to judicial review under the APA. At the Tribe's option, appeal may be taken to the IBIA to the extent it has jurisdiction. Procedures for the appeal shall be the standard appeal procedures in 25 C.F.R. Part 2.

11. The parties disagree about fundability of these positions. Nothing in this Agreement shall preclude the Tribe from applying for funding under the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §450, et seq.

Signatures:


Special Agent in Charge, District III
Office of Law Enforcement Services and Security,
Bureau of Indian Affairs


Chair, Hopland Band of Pomo Indians

MAR 15 2005 18/5
Date

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Date