



IN REPLY REFER TO

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

COPY

DEC 09 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7002 3150 0005 2285 2592

Mark A. Levitan  
Marbeau & Peebles, LLP  
1001 Second Street  
Sacramento, California 95814

Dear Mr. Levitan:

On behalf of Mr. Darren Rose, you had previously submitted a Petition for the Partition of the off-reservation allotment No. RED-549, Jim Bender (Bender), original allottee. The petition proposes the subdivision of the 160-acre allotment located just south of the City of Yreka, California, along the Interstate 5 corridor in Siskiyou County.

Over a period of years, Mr. Rose has acquired approximately 60% of the undivided interests through gift deeds or purchases from co-owners, all of which have been approved under applicable law, regulations and procedures. However, for whatever reasons, there remain several co-owners who have declined to convey their interests to Mr. Rose. Thus, on Mr. Rose's behalf, a forced partition has been requested pursuant to 25 CFR 152.33(b) and as otherwise authorized in 25 U.S.C. § 483 (also, Sampson v. Andrus, 482 F.Supp. 240 (D. S.D. 1980)). As this allotment has undivided interests that were fee patented, you were advised that the partition would need to be accomplished by execution of deeds.

As you were previously advised, transactions or communications related to the sale, exchange, transfer, or conversion of Indian trust land requires our notification to all individual Indian landowners regarding their right to consult with the "Class" counsel in the Cobell litigation prior to proceeding with further communications or the transactions.

We had previously provided the following individual owners on the RED-549 allotment with the required Cobell notice: Darren Rose, Evelyn Rose Kerrigan, Dorothy Rose Strang, and Douglas Kingsbury. The only owner returning a signed Cobell "waiver" was your client, Darren Rose. Absent the return of the Cobell notices, no further communication regarding the proposed partition has been conducted with these three individuals.

The following deceased individuals also own undivided interests in the subject allotment, however, because their estates are unprobated, no Cobell notices were sent: Estate of Warren Rose, Sr.; Estate of Winnie Nelson; Estate of Eldon T. Offield; Estate of Edna Kingsbury; and the Estate of Joyce Rose Asseltine.

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TAKE PRIDE  
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COMMISSION

As you were informed in our July 12, 2004 letter, the Office of the Solicitor advised that we have no authority to represent the undetermined heirs in the proposed land partition, and you were advised to pursue this matter with the Interior Department's Office of Hearings and Appeals. We were informally advised that the Office of Hearings & Appeals was reluctant to assume this role. You have engaged services to assist in collecting information and supporting documents needed for preparation of several of the probate cases. However, as of this date, none of the cases have been adjudicated.

It is noted that under the proposed partition, it is indicated that Andrew John Freeman, a non-Indian life estate owner in the subject allotment, would receive title to parcel 5, the same parcel as proposed for conveyance to the undetermined heirs. As Mr. Freeman is not a party to this partition, and the other owners have not been consulted, we will not accept that his life estate interests will "arbitrarily" be placed against the ownership of the undetermined heirs. Our records reflect that Mr. Freeman obtained his life estate interest through the probate of the Estate of Lillian Snelling Rose Freeman, Darren Rose's mother. Until his life estate is extinguished, the life-estate holder is entitled to use of the entire allotment and his share of any income derived from the entire allotment.

Additionally, the subject allotment includes other "fee" undivided interests. Darren Rose has stated that he purchased all of these interests, but he is yet to provide us with appropriate title evidence for review by the Office of the Solicitor.

Over the last year, we have received information that Darren Rose, stated as being an adopted member of the Alturas Rancheria, and the Alturas Rancheria have held meetings with the Siskiyou County Board of Supervisors, et al., for the purpose of announcing the Rancheria's plans to construct and operate the "Shasta Mountain Casino" on the Benter allotment just south of Yreka. However, there has been no notification to this office of the proposed casino, and our staff has not been requested to review any environmental data for the construction of the facility that might be required under the Alturas Rancheria's present Tribal-State Compact or the National Environmental Policy Act.

Two members of our staff conducted an inspection of the Benter allotment on December 5<sup>th</sup>, and enclosed are copies of the photos taken. As we are aware that the Alturas Rancheria may own the adjacent lands, they utilized GPS, in conjunction with the aerial photography overlay of the proposed parcel map that was provided in Mr. Rose's partition request, to confirm that the construction is taking place on the Benter allotment in the areas identified as parcels 5 and 6 of the draft partition map (see enclosed photo overlay map). Under the proposed partition, title to parcel 5 would be conveyed to the "undetermined" heirs of the aforementioned five estates, and parcel 6 would be conveyed to Darren Rose.

It is our understanding that some of the owners remain enrolled with the Karuk Tribe and that some of the decedents, or their probable heirs, were/are enrolled with other federally-recognized tribes. However, as the partition has not been approved, and we have not been requested to approve a lease or any other contract, we have no explanation as to why you believe the Alturas Rancheria has the authority to commence construction or otherwise exert jurisdiction over the subject allotment.

It was determined during the on-site visit that a historical cabin appears to have been leveled during the on-going construction and that not all of the previously identified cultural sites are being fully protected. There has been no consultation with the State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act or the U.S. Fish &

Wildlife Service for Section 7 consultation under the Endangered Species Act for this project. Neither Mr. Ross nor the Alvaras Rancheria has provided us with an environmental assessment. Based on the information received or collected, we can only conclude that the subject partition will result in, and is being accomplished for, the construction of a gaming, or some other facility. Accordingly, we are requesting that you immediately instruct your clients to cease all construction and that an appropriate environmental assessment be submitted for review and analysis along with an appropriate lease agreement.

Based on the present construction, this proposed partition can no longer be considered a "categorical exclusion" under the National Environmental Policy Act. Also, if the partition is being accomplished for gaming purposes, final approval of the partition or a gaming lease would rest at the Assistant Secretary's level. Enclosed is a copy of the March 7, 2005 guidelines for gaming-related acquisitions.

This decision may be appealed to the Interior Board of Indian Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340; copy enclosed. Your notice of appeal to the Board must be signed and mailed within 30 days of the date you receive this letter. Your notice of appeal should clearly identify the decision being appealed. If possible, attach a copy of this letter.

You must send copies of your notice of appeal to (1) the Assistant Secretary-Indian Affairs, U.S. Department of the Interior, 1849 C Street, N.W., MS-4141-MTB, Washington, D.C. 20240; (2) each interested party known to you; and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Regional Director

Enclosures

cc: National Indian Gaming Commission  
Attention: Penny Coleman  
1441 L Street, N.W., Suite 9-100  
Washington, D.C. 20005

Office of County Counsel  
County of Siskiyou  
205 Lane Street  
Yreka, CA 96097

Director, Bureau of Indian Affairs  
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Washington, D.C. 20240

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Bureau of Indian Affairs, Pacific Region  
 Division of Environmental, CUM, and Safety  
 2881 Cottage Way  
 Sacramento, CA 95825  
 1-916-923-

This letter, construction area and access road  
 represents and estimates based on a field inspection  
 conducted on December 5, 2005



# Jim Bender Allotment Siskiyou County, CA



- Legend:**
- GPS Points
  - ⋯ Access road (estimated)
  - Construction area (estimated)
  - Jim Bender Allotment